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No. 08-1017

Supreme Court, U.S.
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In The
Supreme Court of the United States

THE BOARD OF COMMISSIONERS FOR THE ORLEANS LEVEE DISTRICT, PARISH OF ORLEANS,

Petitioner,

v.

SUSAN AND WILLIAM LAURENDINE, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The Civil District Court For The Parish Of Orleans, State Of Louisiana

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

ARGUMENT 5

CONCLUSION 17

APPENDIX

Louisiana Code of Civil Procedure Article 151 (effective August 15, 2008) ..... App. 1

Address and flood map of Judge Kern Reese's home obtained from the Louisiana Secretary of State's website and http://mapper.cctechnol.com/floodmap.php ..... App. 3

Complaint for Damages, *Dorothy Reese v. United States of America, et al.*, Civil Action No. 07-4999 ..... App. 5

Complaint for Damages, *Justin Reese v. United States of America, et al.*, Civil Action No. 07-5148 ..... App. 111

Complaint for Damages, *Jared Reese v. United States of America, et al.*, Civil Action No. 07-5372 ..... App. 160

Second Supplemental and Amending Petition, *Susan and William Laurendine, et al. v. The Board of Commissioners for the Orleans Levee District*, No. 05-11660 ..... App. 211

Transcript of Hearing on the Orleans Levee District's Motion to Recuse Judge Reese ..... App. 222

TABLE OF CONTENTS – Continued

Page

June 30, 2008 Order of Recusal Signed by Judge Reese in *Rodriguez* case.....App. 269

Class Action Petition for Damages, *Lisa Rodriguez, et al. v. Sewerage and Water Board of New Orleans, et al.*, No. 06-9763 .....App. 271

January 13, 2009 Judgment Granting Sewerage and Water Board of New Orleans' Motion to Recuse Judge Reese and Reasons for Judgment.....App. 292

February 9, 2009 Notice of Signing of Judgment.....App. 295

TABLE OF AUTHORITIES

Page

CASES

Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 106 S.Ct. 1580 (1986) 7, 11, 12

In Re Murchison, 349 U.S. 133, 75 S.Ct. 623 (1955) 7

Succession of Ratcliffe v. Frudge, 1999-575 (La.App. 3 Cir. 12/8/99); 755 So.2d 918 13

Tramonte v. Chrysler Corporation, 136 F.3d 1025 (5th Cir. 1998) 9, 11

STATUTES

La. C.C. Art. 6 16

La. C.C. Art. 2317 2

La. C.C.P. Art. 151 ..... 5, 14, 15, 16, 17

La. C.C.P. Art. 154 ..... 5, 13

La. C.C.P. Art. 155 13

OTHER AUTHORITIES

Act No. 663 of the Louisiana Legislature 5, 14

STATEMENT OF THE CASE

The Sewerage and Water Board of New Orleans adopts the Orleans Levee District's Statement of the Case as set forth in its Petition for Writ of Certiorari except as corrected and supplemented below.

Hurricane Katrina made landfall east of New Orleans, Louisiana, on August 29, 2005. The subsequent levee breaches at the 17th Street, London Avenue and Industrial Canals resulted in the flooding of much of the city. The home of Judge Kern A. Reese and his family, located at [Home Address Omitted] in New Orleans, sustained flood waters of 7.4 feet. *See* App. 3, 4. Similarly, the home of Judge Michael G. Bagneris, located at [Home Address Omitted] in New Orleans, flooded. *See* OLD Petition for Writ of Certiorari, App. 294-364.

The present class action suit was filed on September 24, 2005, seeking recovery on behalf of all residents, business owners and occupants of the affected areas in the New Orleans area damaged by flooding. *See* OLD Petition for Writ of Certiorari, App. 214-218. The First Supplemental and Amending Petition filed on June 7, 2006, and the Second Supplemental and Amending Petition filed on July 10, 2006, further refined the proposed class to include all residents, domiciliaries, property owners and business owners of the parishes of Orleans and Jefferson whose persons, properties or businesses were damaged by the flooding as a result of the alleged negligence of the Orleans Levee District (OLD), the

Sewerage and Water Board of New Orleans, and others. *See* OLD Petition for Writ of Certiorari, App. 219-237. As residents of Orleans Parish whose homes flooded, both Judge Reese and Judge Bagneris are persons falling within the proposed class of affected persons.

On August 29, 2007, Judge Reese's wife, Dorothy Reese, filed suit against the Sewerage and Water Board of New Orleans, OLD, and several other defendants in United States District Court for the Eastern District of Louisiana for damages to her person and property sustained as a result of the levee breaches. *See* App. 5-110.

In her Complaint, Dorothy Reese alleges the U.S. Army Corps of Engineers, OLD, the East Jefferson Levee District and the Sewerage and Water Board of New Orleans were negligent in designing, constructing and maintaining the levees and floodwalls of the 17th Street Canal, the London Avenue Canal, and the Orleans Avenue Canal. *See* App. 43-49. Dorothy Reese further alleges the above-named defendants were negligent in dredging the 17th Street Canal and are strictly liable to her under La. C.C. Art. 2317. *See* App. 41-42, 51-52. Reese claims as a result of this negligent conduct, she has suffered extensive damage, including property damage and mental anguish. *See* App. 53-55.

Justin Reese and Jared Reese, Judge Reese's children, filed separate suits in United States District Court for the Eastern District of Louisiana against

the same defendants. *See* App. 111-159 and 160-210. Both seek recovery for damage to their personal possessions and personal injuries. *See* App. 157-159 and 208-210. Justin Reese and Jared Reese assert the same causes of action as those asserted by their mother, Dorothy Reese, in her lawsuit. *See* App. 146-157 and 196-207.

On August 29, 2007, Judge Bagneris and his wife also filed suit against the Sewerage and Water Board of New Orleans, OLD and others in United States District Court for the Eastern District of Louisiana for damages sustained to their residence. *See* OLD Petition for Writ of Certiorari, App. 294-364. The *Bagneris* and *Reese* suits assert virtually identical allegations against the Sewerage and Water Board of New Orleans and OLD as they are represented and the lawsuits were filed by the same law firm, Sher Garner Cahill Richter Klein & Hilbert. *See* OLD Petition for Writ of Certiorari, App. 294-364.

For the reasons indicated in its Petition for Writ of Certiorari, OLD moved to recuse Judge Reese. Judge Reese refused to grant the motion and pursuant to Article 154 of the Louisiana Code of Procedure referred the recusal motion to the clerk's office for reallottment to another judge for hearing. The motion to recuse was allotted to Judge Bagneris. Because Judge Bagneris's home flooded, OLD moved to recuse him from hearing the motion to recuse Judge Reese. Judge Bagneris declined to recuse himself and refused to refer the motion to another judge. Instead, although he said due to the appearance of impropriety

he would have recused himself if *Laurendine* had been allotted to him, he denied OLD's motion to recuse Judge Bagneris from hearing the motion to recuse Judge Reese. *See* OLD Petition for Writ of Certiorari, App. 1-8. Judge Bagneris then took up the motion to recuse Judge Reese and, on May 23, 2008, denied the motion. *See* OLD Petition for Writ of Certiorari, App. 1-8.

Effective August 15, 2008, the Louisiana procedure article governing recusal was amended to make mandatory certain previously permissive bases for recusal. *See* App. 1. After the changes became effective, the Sewerage and Water Board of New Orleans moved to recuse Judge Reese from *Laurendine*. On January 13, 2009, Judge Robin Giarusso of Civil District Court for the Parish of Orleans issued a Judgment recusing Judge Reese from presiding over the *Laurendine* matter. In response to that ruling, plaintiffs, on February 6, 2009, filed a Writ Application for Supervisory Review to the Louisiana Fourth Circuit Court of Appeal. The Sewerage and Water Board of New Orleans filed an Original Brief in Opposition to Plaintiffs' Application for Supervisory Writ of Review on March 3, 2009. The Louisiana Fourth Circuit Court of Appeal has not ruled on the writ application and it remains pending.

ARGUMENT

The Due Process Clause of the Fourteenth Amendment warrants the recusal of Judge Reese. Judge Bagneris's denial, first, of the motion to recuse Judge Bagneris from hearing OLD's Motion to Recuse Judge Reese and, second, of the motion to recuse Judge Reese from presiding over *Laurendine* violated the Due Process Clause *and* the Louisiana Code of Civil Procedure. The cases cited and discussed by OLD support Judge Reese's and Judge Bagneris's recusals.

In Louisiana, Article 151 of the Louisiana Code of Civil Procedure sets forth the grounds upon which judges shall or may be recused. Article 151 was amended in 2008 by Act No. 663 of the Louisiana Legislature. The prior version of Article 151 provided that a judge *may* be recused when he is the spouse of a party or related to a party within the fourth degree or is biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties to such an extent that he would be unable to conduct fair and impartial proceedings. Article 151, as revised, now mandates recusal when a judge's spouse or child is a party to the suit before him or when he is interested in the cause or its outcome to such an extent he would be unable to conduct fair and impartial proceedings.

Furthermore, Louisiana law provides when a valid ground for recusal is pled, the trial judge *shall* recuse himself or refer the motion to another judge for hearing. La. C.C.P. Art. 154.

I. THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT WARRANTS THE RECUSAL OF JUDGE REESE AND JUDGE BAGNERIS.

The proposed class in the *Laurendine* lawsuit is made up of: "[a]ll residents, domiciliaries, property owners and business owners of the parish[ ] of Orleans . . . whose persons, properties or businesses were damaged by the flooding caused by the failure of the 17th Street Canal and London Avenue Canal hurricane protection levees and floodwalls. . . ." App. 217-218.

1. The Due Process Clause Requires That Judge Reese Be Recused Because He is a Member of the Putative Class.

Based on the definition of the proposed class, Judge Reese, his wife, and his sons are members of the putative class given the location of their residence and the injuries and damage allegedly sustained. During the hearing on the Motion to Recuse, Judge Reese testified that he resided in Orleans Parish when Hurricane Katrina made landfall. *See* App. 241. Judge Reese also testified that he experienced mental anguish and inconvenience as a result of being displaced from his home after Hurricane Katrina. *See* App. 258. In addition, Judge Reese sustained personal property damage in that he lost use of his residence and was required to buy a new home in Baton Rouge. *See* App. 258-259.

If Judge Reese continues to preside over *Laurendine*, he will decide issues in which he has a financial interest in the outcome. As the Judge presiding over this case, Judge Reese will have to decide whether to certify a class of which he is a proposed member. He will be required to decide the geographical boundaries and make up of the class. If the class is certified, Judge Reese will decide liability issues that may determine his own recovery. Accordingly, Judge Reese is financially interested in whether the putative class will be certified and how liability issues are decided.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution guarantees to all litigants the right to a fair trial and an impartial tribunal. Given Judge Reese's personal interest in the litigation, his continued participation in this matter as presiding judge violates OLD's and the Sewerage and Water Board's due process rights. *See In Re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625 (1955); *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 821-22, 106 S.Ct. 1580, 1585 (1986). Judge Reese should have been recused.

Judge Reese has recognized in another case that he should be recused when he could be a member of the putative class. In *Lisa Rodriguez v. Sewerage and Water Board of New Orleans, et al.*, No. 06-9763 in Civil District Court for the Parish of Orleans, State of Louisiana, plaintiffs filed a class action lawsuit seeking recovery for damages caused by the levee breaches in Hurricane Katrina against many of the same defendants sued in *Laurendine*. *See* App. 271-291.

The *Rodriguez* suit was filed on behalf of a proposed class made up of:

> All residents, domiciliaries, business entities, property owners, and other persons and entities residing or present on August 29, 2005 inside the geographic area bounded by (1) Lake Pontchartrain on the North, (2) Elysian Fields Avenue on the East, (3) Interstate Highway 610 on the South, and (4) the Jefferson Parish line on the West, or whose decedents were present in said area on or after August 29, 2005, who suffered damages as a result of Hurricane Katrina-related flooding on and after August 29, 2005, and thereafter suffered additional damages including but not limited to wrongful death, personal injury, loss of income and other economic losses, mental anguish, long term health risks associated with exposure to polluted flood waters, relocation expenses, damage to real property, and damage to personal property.

App. 279-280.

The *Rodriguez* matter was allotted to Judge Reese and he recused himself. According to the Order of Recusal, he did so because he lives in "the defined footprint" of the action. Judge Reese explained that "living in the defined footprint of this action *could* make me a putative class member." (Emphasis added). App. 269-270.

The putative classes in *Laurendine* and *Rodriguez* include residents of Orleans Parish who suffered

flood-related damages on and after August 29, 2005. Judge Reese recognized in *Rodriguez* that he falls within this category of persons and recused himself. In *Laurendine*, like in *Rodriguez*, Judge Reese lives in the defined footprint of the action. There is no distinction between the two putative classes for purposes of recusal. Accordingly, he should have been recused from presiding over the *Laurendine* action.

2. The Due Process Clause Requires That Judge Reese Be Recused Because His Wife and Sons Have Sued the OLD and Sewerage and Water Board of New Orleans.

In connection with Hurricane Katrina and the flooding of the city, Judge Reese's wife and sons filed suit against the OLD, the Sewerage and Water Board of New Orleans and others in federal court. Dorothy Reese, Justin Reese, and Jared Reese seek damages for emotional injuries and property damage caused by the negligence of the named defendants. *See* App. 53-55, 157-159, 208-210.

If Judge Reese were allowed to preside in *Laurendine*, he would have to decide issues relating to the claims of his wife and children. Judge Reese should not be allowed to preside as judge in a matter that affects his family's potential recovery. As noted by the United States Fifth Circuit Court of Appeal, "even if a judge's relative is not yet a party to a class action, a judge could advance the interests of that

relative in the pre-certification stage of class litigation." *Tramonte v. Chrysler Corp.*, 136 F.3d 1025, 1031 (5th Cir. 1998). In fairness to both the parties and the court, Judge Reese should be recused.

3. Judge Reese's and His Family's Status as Putative Class Members Rather Than Certified Class Members Is of No Consequence.

Below, plaintiffs suggested Judge Reese need not be recused because he and his wife and children are only putative or potential members of the class. The consequence of this argument, however, is that Judge Reese would be left to decide whether he, his wife and children are to become actual plaintiffs to the litigation. He would decide whether to certify a class and thereby transform all putative class members into actual plaintiffs.

If Judge Reese were left in place to preside over this matter and decided to certify the proposed class, what then would he do? Would he then recuse himself and thereby cause the case to be reallotted to a judge that knows nothing about it, probably upsetting any scheduling order that is in place? Plaintiffs' argument defeats common notions of judicial economy and, with all due respect to Judge Reese, puts him in the position of having to choose between his family's interests and those of the defendants. Judge Reese may be an uncommonly fair jurist, but that is not a position any husband or father should be put in and, certainly,

defendants should not be left in the position of hoping the judge can overcome family pressures he surely will face in deciding class certification.[1]

The United States Fifth Circuit Court of Appeals in *Tramonte*, 136 F.3d at 1025, addressed this issue in considering a motion to recuse in a class action lawsuit under the federal recusal statute. The Court reasoned "it seems fairly obvious that where a judge or immediate family member is a member of a class seeking monetary relief, [the recusal statute] requires recusal because of the judge's financial interest in the case." *Id.*, at 1029. The Court went on, "[w]e conclude that where a judge, her spouse, or a minor child residing in her household is a member of a putative class, there exists a 'financial interest' in the case mandating recusal . . . The decision on a request to certify is itself a critical step, often with large financial consequences. An assertion that a member of a putative class lacks financial interest relevant to the trial court's decision until after the class is certified blinks at reality." *Id.*, at 1030.

Presiding over this case, Judge Reese will decide the cause of flooding in his neighborhood. He will decide negligence issues that relate to the flooding of his own house. He will decide the very issues that are

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[1] The Supreme Court of the United States has found the existence of a mere possible temptation to rule one way due to a judge's personal financial stake is sufficient to deprive a party of its due process rights. *Aetna*, 475 U.S. at 825, 106 S.Ct. at 1587.

raised in his wife and children's federal court lawsuits.

Judge Reese's rulings have weight. They are law of the case and are persuasive authority in other cases. Judge Reese should not decide claims that affect his and his family's financial interests either in this suit or in separate suits.[2] None of the *Laurendine* defendants would be guaranteed a fair trial and a fair tribunal under the Due Process Clause of the Fourth Amendment if Judge Reese were allowed to preside.

4. Allowing Judge Bagneris to Rule on Either Motion to Recuse Violates The Due Process Clause.

Judge Bagneris and his wife are also members of the *Laurendine* putative class given the location of their residence and the injuries and damage allegedly sustained by them. *See* OLD Petition for Writ of Certiorari, App. 294. Their house flooded and they lost use of it. Judge Bagneris and his wife allegedly suffered mental anguish and emotional distress as a result of the flooding. *See* OLD Petition for Writ of Certiorari, App. 361.

Judge Bagneris should not have decided the motion to recuse Judge Reese. Once a motion to recuse Judge Bagneris was filed, he should not have

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[2] In *Aetna*, the Court found a due process violation where the Judge's actions benefited him not in the case at issue, but in another proceeding. *See*, *Aetna*, 475 U.S. at 830, 106 S.Ct. at 1590 (Brennan, J., concurring).

proceeded with either the motion to recuse him or Judge Reese.

Article 154 of the Louisiana Code of Civil Procedure provides that "[i]f a valid ground for recusation is set forth in [a motion for recusal], the trial judge shall either recuse himself, or refer the motion to another judge or a judge ad hoc, as provided in Articles 155 and 156, for a hearing." As at least one Louisiana court has noted, "[t]he purpose of this rule is obvious–to guard against bias." *Succession of Ratcliffe v. Frudge*, 1999-575 (La.App. 3 Cir. 12/8/99); 755 So.2d 918, 923.

Paragraph B of Article 155 provides that "[i]n a district court having more than two judges, the motion to recuse shall be referred to another judge of the district court for trial through the random process of assignment in accordance with the provisions of Code of Civil Procedure Article 253.1." Civil District Court for the Parish of Orleans has more than two judges.

Per the code of procedure, once OLD filed a motion to recuse him and averred that he was interested in the outcome of the suit, Judge Bagneris's options were limited to granting the motion or referring it to another judge of the district. La. C.C.P. Arts. 154 and 155. Judge Bagneris violated the Louisiana Code of Civil Procedure by failing to recuse himself or refer the motion to recuse to another judge. He also violated the Due Process Clause by not recusing himself and presiding over resolution of an issue,

recusal, in a matter in which he has a personal interest.

Further. Judge Bagneris's denial of OLD's Motion to Recuse Judge Reese violated the Due Process Clause. The denial of the motion to recuse potentially advanced Judge Bagneris's and his wife's financial interests. In his federal court suit, Judge Bagneris personally makes the same flooding damage claim that Judge Reese's family and the plaintiffs in *Laurendine* make against OLD and the Sewerage and Water Board of New Orleans. By leaving Judge Reese in place, Judge Bagneris left in place a judge whose family is advancing through the same attorneys the same arguments that Judge Bagneris is asserting. Judge Bagneris's failure to recuse himself and Judge Reese violated the Due Process Clause.

In sum, Judge Bagneris's decision to rule on either motion to recuse violated the Due Process Clause of the Fourteenth Amendment.

II. THE REVISED VERSION OF ARTICLE 151 OF THE LOUISIANA CODE OF CIVIL PROCEDURE MANDATES THE RECUSAL OF JUDGE REESE IN ACCORDANCE WITH THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

After Judge Bagneris ruled on OLD's motion to recuse Judge Reese, the Louisiana Legislature amended Article 151 of the Louisiana Code of Civil Procedure by Act No. 663. The prior version of Article

151 provided that a judge *may* be recused when he is the spouse of a party or related to a party within the fourth degree or is biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties to such an extent that he would be unable to conduct fair and impartial proceedings. Effective August 15, 2008, certain of these permissive bases for recusal were made mandatory. The revised article reads in pertinent part:

> A. A judge of any court, trial or appellate, *shall* be recused when he:
>
> * * *
>
> (3) Is the spouse of a party . . . or the judge's parent, child, or immediate family member is a party . . . ; or
>
> (4) Is biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties . . . or any witness to such an extent that he would be unable to conduct fair and impartial proceedings.

(Emphasis added). La. C.C.P. Art. 151(A). App. 1.

Based upon the revision to the recusal article, the Sewerage and Water Board filed a Motion to Recuse Judge Reese. Judge Giarrusso granted the motion. App. 292-295. She found under the mandatory language of the revision Judge Reese must be recused because he and his family are putative class members to the litigation.

Plaintiffs have filed a Writ Application for Supervisory Review in the Louisiana Fourth Circuit Court of Appeal. They argue Judge Giarrusso was barred from considering the Sewerage and Water Board of New Orleans's motion because the ruling denying OLD's motion to recuse is *res judicata*. And they argue the amendment to Article 151 cannot be applied retroactively.

Plaintiffs' writ application remains under consideration by the Louisiana Fourth Circuit Court of Appeal. The Sewerage and Water Board of New Orleans has responded to the writ application arguing *res judicata* does not apply given the subsequent change to Article 151 and the interlocutory nature of the prior ruling. Judge Bagneris decided the Orleans Levee District's motion to recuse based upon the prior recusal statute. Judge Bagneris did not decide the same issue presented to Judge Giarrusso because the law was different.

Further, the revision to La. C.C.P. Art. 151 applies both retroactively and prospectively. Article 6 of the Louisiana Civil Code provides "[p]rocedural and interpretative laws apply both prospectively and retroactively, unless there is a legislative expression to the contrary." La. C.C. Art. 6. Article 151 is a procedural law found in the Louisiana Code of Civil Procedure. Thus, it applies prospectively and retroactively. There is no legislative expression to the contrary and retroactive application of the revisions does not unconstitutionally disturb plaintiffs' vested

rights. The recent revision to Article 151 applies to this case.

Judge Reese is interested in the cause and outcome of this case to such an extent that he would be unable to conduct fair and impartial proceedings. The revised version of Article 151, replacing the word *may* with the word *shall* in the article, makes clear that the right to a fair trial and fair tribunal under the Due Process Clause of the Fourteenth Amendment is paramount and must be adequately protected.

CONCLUSION

The Due Process Clause of the Fourteenth Amendment guarantees the right to a fair trial and a fair tribunal. Neither OLD nor the Sewerage and Water Board of New Orleans would be guaranteed a fair trial and fair tribunal if Judge Reese adjudicates this matter. Judge Reese, his wife, and his sons are members of the putative class. Were Judge Reese to preside over this lawsuit, his decisions would have a direct effect on his interests.

Likewise, Judge Bagneris's actions violate the Due Process Clause. Judge Bagneris and his wife are putative class members and have filed suit against the same defendants for the same claims at issue in this lawsuit. Judge Bagneris should not decide *any* issue in this case.

The Sewerage and Water Board of New Orleans respectfully requests that this Honorable Court grant the Orleans Levee District's Petition for Writ of Certiorari.

Respectfully submitted,

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LOUISIANA CODE OF CIVIL PROCEDURE

BOOK I. COURTS, ACTIONS, AND PARTIES

TITLE I. COURTS

* * *

CHAPTER 3. RECUSATION OF JUDGES

* * *

C.C.P. Art. 151. Grounds

A. A judge of any court, trial or appellate, shall be recused when he:

(1) Is a witness in the cause;

(2) Has been employed or consulted as an attorney in the cause or has previously been associated with an attorney during the latter's employment in the cause, and the judge participated in representation in the cause;

(3) Is the spouse of a party, or of an attorney employed in the cause or the judge's parent, child, or immediate family member is a party or attorney employed in the cause; or

(4) Is biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys or any witness to such an extent that he would be unable to conduct fair and impartial proceedings.

B. A judge of any court, trial or appellate, may be recused when he:

(1) Has been associated with an attorney during the latter's employment in the cause;

(2) At the time of the hearing of any contested issue in the cause, has continued to employ, to represent him personally, the attorney actually handling the cause (not just a member of that attorney's firm), and in this case the employment shall be disclosed to each party in the cause;

(3) Has performed a judicial act in the cause in another court; or

(4) Is related to: a party or the spouse of a party, within the fourth degree; an attorney employed in the cause or the spouse of the attorney, within the second degree; or if the judge's spouse, parent, child, or immediate family member living in the judge's household has a substantial economic interest in the subject matter in controversy sufficient to prevent the judge from conducting fair and impartial proceedings in the cause.

C. In any cause in which the state, or a political subdivision thereof, or a religious body or corporation is interested, the fact that the judge is a citizen of the state or a resident of the political subdivision, or pays taxes thereto, or is a member of the religious body or corporation, is not a ground for recusation.

Amended by Acts 1983, No. 106, § 1; Acts 1987, No. 579, § 1; Acts 1988, No. 515, § 2, eff. Jan. 1, 1989; Acts 2008, No. 663, § 1.

* * *

Office Incumbent History

Current Incumbents are in Bold

(Filed Aug. 26, 2008)

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Kern Reese, Democrat, Exp.Date:12/31/08	4600 Owens Blvd., New Orleans, LA 70122, 504/282-9874
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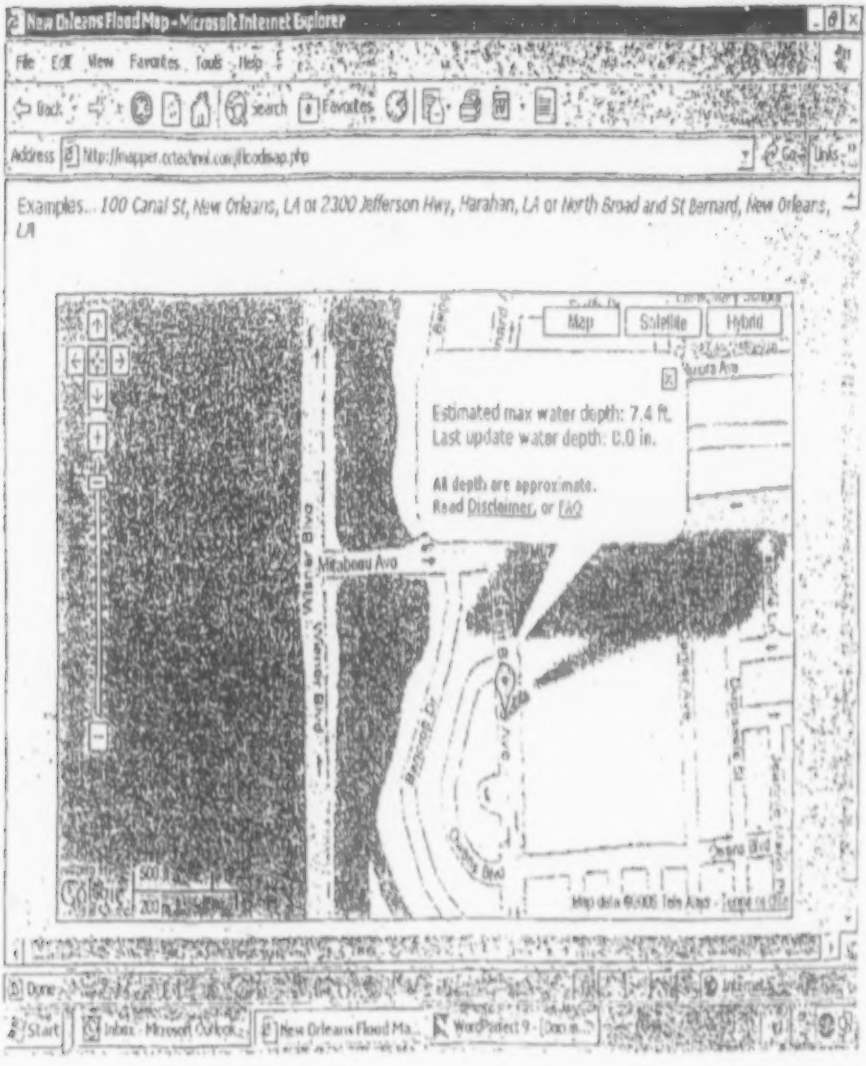

App. 4

BEST AVAILABLE COPY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DOROTHY REESE	**CIVIL ACTION NO.** _____
vs.	**SECTION** 07-4999
UNITED STATES OF AMERICA BOARD OF COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT, BOARD OF COMMISSIONERS OF THE EAST JEFFERSON LEVEE DISTRICT, SEWERAGE AND WATER BOARD OF NEW ORLEANS, ST. PAUL FIRE & MARINE INSURANCE COMPANY, AND NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH	**JUDGE** _____
	MAGISTRATE SECT. K MAG. 2

****

COMPLAINT FOR DAMAGES

(Filed Aug. 29, 2007)

Dorothy Reese ("Plaintiff") respectfully submits her Complaint for Damages as follows:

INTRODUCTION

1.

This Complaint arises out of catastrophic failures of and deficiencies in the hurricane protection system surrounding the Parish of Orleans, State of Louisiana, which occurred on and after August 29, 2005. These failures and deficiencies caused and substantially contributed to the inundation of approximately 80% of the New Orleans metropolitan area, causing extensive harm and loss of life, and destroying or rendering uninhabitable approximately 160,000 residences and buildings.

2.

Plaintiff owned and/or resided at the property located at [Home Address Omitted] on or about August 29, 2005 when the New Orleans levee system failed, particularly the 17th Street, London Avenue, and Orleans Avenue Canals. The failure of the New Orleans levee system, the horrific result of man-made acts, caused extensive damage to Plaintiff's residence and contents among other damages discussed *infra*.

PARTIES

3.

Plaintiff is a citizen of the state of Louisiana and domiciled in the state of Louisiana. On February 27, 2007, Plaintiff presented a claim to the United States

Army Corps of Engineers (the "Corps") for damages arising out of the failure of the New Orleans levee and floodwall system pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671, *et seq.* The Corps acknowledged receipt of Plaintiff's claim and assigned the following claim numbers – 07N15T0024000, 07N15T0256397, and 07N15T0023423.[1] Plaintiff also presented a claim to the Corps for damages arising out of the failure of the New Orleans levee and floodwall system pursuant to the Suits in Admiralty Act, 46 U.S.C. §30901-18, the Public Vessels Act, 46 U.S.C. §46-31101-13, the Admiralty Extension Act, 46 U.S.C. §30101, and the general maritime law of the United States. The Corps acknowledged receipt of Plaintiff's second claim and assigned a claim number of 07N15T0257197.[2] Six months have elapsed since the presentation of Plaintiff's claims, and the United States Army Corps of Engineers has failed to act by either accepting or rejecting Plaintiff's claims. Thus, such failure must presumably be considered a denial of Plaintiff's claims.

4.

Defendant United States of America is a sovereign government amendable to suit for civil liability in accordance with the federal laws and regulations

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[1] *See* Exhibit "A." The government provided different claim numbers for the same form.

[2] *See* Exhibit "B."

as set forth herein. Defendant United States Army Corps of Engineers is a division of the United States Government under the direct jurisdiction of the Department of the Army (collectively the "Corps").

5.

Defendant Board of Commissioners for the Orleans Levee District ("OLD") is a local government entity created by Louisiana Revised Statute §38:291, amendable to suit, and domiciled in the Parish of Orleans, State of Louisiana.

6.

Defendant Sewerage and Water Board of New Orleans ("SWB") is a political subdivision of the State of Louisiana created by Louisiana Revised Statutes §33:4071 *et seq.*, amendable to suit, and domiciled in the Parish of Orleans, State of Louisiana.

7.

Defendant Board of Commissioners of the East Jefferson Levee District ("EJLD") is a political subdivision of the State of Louisiana created by Louisiana Revised Statute §38:291, amenable to suit, and domiciled in the Parish of Jefferson, State of Louisiana.

8.

Defendant St. Paul Fire and Marine Insurance company ("St. Paul") is a foreign insurance company authorized to do and doing business within the State of Louisiana. At all times relevant hereto, St. Paul had in full force and effect a policy of liability insurance, under the terms, provisions, and conditions of which is assumed liability for the acts and/or negligence of its insured, the Board of Commissioners of the Orleans Levee District, and is therefore liable to Plaintiff, and Plaintiff asserts its claims under the Louisiana Direct Action Statute, LSA-R.S. 22:655.

9.

Defendant National Union Fire Insurance Company of Pittsburgh ("National Union") is a foreign insurance company authorized to do and doing business within the State of Louisiana. At all times relevant hereto, National Union had in full force and effect a policy of liability insurance, under the terms, provisions, and conditions of which is assumed liability for the acts and/or negligence of its insured, the Board of Commissioners of the East Jefferson Levee District, and is therefore liable to Plaintiff, and Plaintiff asserts its claims under the Louisiana Direct Action Statute, LSA-R.S. 22:655.

10.

Plaintiff avers that this matter is timely to all Defendants and is within the applicable statute of

limitations as there is a related class action proceeding pending in this Court in matter captioned *In re Katrina Canal Breaches Litigation*, No. 05-4182(K)(2) (Ref: LEVEE). As recognized by the United States Supreme Court, the "commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would not have been parties had the suit been permitted to continue as a class action." *Crown, Cork, & Seal Co., Inc. v. Parker*, 462 U.S. 345, 353-54 (1983).

JURISDICTION

11.

This Court maintains subject matter jurisdiction over this action pursuant to 28 U.S.C. §1346(b) (Defendant United States) and 28 U.S.C. §2671, *et seq.* (Federal Tort Claims Act), violations of laws of the United States, including, but not limited to, 33 U.S.C. § 1251, *et seq.* (Federal Water Pollution Control Act), 16 U.S.C. § 1451 *et seq.* (Coastal Zone Management Act), and, 33 U.S.C. §403 *et seq.* (River & Harbors Act), and, alternatively, for violation of the Constitution and Laws of the State of Louisiana as well as the Constitution and Laws of the United States.

12.

Plaintiff has presented to the Corps the written, administrative claims required by the provisions of 28 U.S.C. §2671, *et seq.* (Federal Tort Claims Act) and in

all respects have complied with the provisions of this statute. As discussed *supra*, a period of at least six months has elapsed since the filing of Plaintiff's written, administrative claims.

13.

Alternatively, Plaintiff avers jurisdiction is proper pursuant to 28 U.S.C. § 1331 (federal question jurisdiction). Additionally, and in the alternative, jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1367, in as much as this Court has supplemental jurisdiction over all state law claims herein arising out of the same case or controversy.

14.

Alternatively, Plaintiff pleads admiralty and maritime jurisdiction and causes of action under the Admiralty Extension Act, 46 U.S.C. §30101, the Suits in Admiralty Act, 46 U.S.C. § 30901-18, and/or the Public Vessels Act, 46 U.S.C. § 31101-13. Upon information and belief, one or more of the vessels owned, operated, and/or controlled by the United States government in the construction of the levees, floodwalls, and canals at issue in this Complaint caused or contributed to Plaintiff's damages. Plaintiff has presented to the Corps the written, administrative claims required by the provisions of 46 U.S.C. §30101 (Admiralty Extension Act). A period of at least six months has elapsed since the filing of Plaintiff's written, administrative claims.

VENUE

15.

Venue is proper in this district pursuant to 28 U.S.C. § 1391 because the Defendants' negligent and wrongful actions occurred in the Eastern District of Louisiana, a substantial part of the events and omissions giving rise to this action occurred in the Eastern District of Louisiana, and the property that is the subject of this action is situated within the Eastern District of Louisiana.

WAIVER OF SOVEREIGN IMMUNITY

16.

The United States of America and the Corps waived their sovereign immunity in connection with the claims asserted in this suit by the enactment of the Federal Tort Claims Act, 28 U.S.C. § 2671 ("FTCA"). While Plaintiff believes that all of his claims against the Corps are derived from the FTCA applying the tort and other laws of the State of Louisiana, out of an abundance of caution, Plaintiff alternatively pleads admirably and maritime jurisdiction and causes of action under the Admiralty Extension Act, 46 U.S.C. §30101, the Suits in Admiralty Act, 46 U.S.C. § 30901-18, the Public Vessels Act, 46 U.S.C. § 31101-13, the Coastal Zone Management Act, 16 U.S.C. § 1451 *et seq.*, and the River & Harbors Act, 33 U.S.C. §403 *et seq.*

17.

Any immunity sought by the Corps pursuant to 33 U.S.C. §702(c) is not available to the extent the provisions of this Act do not apply, have not been complied with, and/or the liability of the Corps is not predicated on flood control activity. The activities undertaken by the Corps in connection with this litigation are not activities forming part of a federal flood control project, nor are the Corps's activities in connection with an authorized federal control project. Accordingly, the provision of the Flood Control Act of 1928, 33 U.S.C. §702(c), is not applicable as a basis for governmental immunity.

FACTUAL BACKGROUND REGARDING THE 17th STREET CANAL

A. The History of the 17th Street Canal

18.

The canal known today as the "17th Street Canal" forms a significant portion of the boundary between Orleans Parish, Louisiana and Jefferson Parish, Louisiana. Historically, the 17th Street Canal has also been known as the "Metairie Outlet Canal," the "Metairie Outfall Canal," the "Metairie Relief Canal," and the "Upperline Canal."

19.

The 17th Street Canal originated at the start of the 1850's as a canal dug through swampy ground to

provide a right-of-way. It was located where the Jefferson and Lake Ponchatrain [sic] Railway was built, a railway connecting the town once called Carrollton with a shipping port on Lake Ponchatrain [sic] in the area today know as Bucktown.

20.

In 1858, a secondary canal was built, connecting the original canal to the river side of the Metairie Ridge. This spur canal was situated alongside a projected street numbered "17th Street," and thus, the canal became known as the "17th Street Canal." The term "17th Street Canal" eventually referred to the original, larger canal to which this spur canal connected.

21.

The community of Bucktown, where the northern end of the 17th Street Canal enters Lake Ponchatrain [sic], was founded more than one hundred years ago as a group of fishing and hunting camps along the canal and Lake Ponchatrain [sic]. The earliest structures were wooden huts raised on stilts, and the canal served as a harbor and a mode of transportation for fishing boats.

22.

More substantial development in this area occurred during the mid-19th century with the construction of a commercial wharf and a resort called "Lakeport." Steamboats docked at the entrance to the New Basin Canal (now Ponchatrain [sic] Boulevard) and at the terminus of the Jefferson and Lake Ponchatrain [sic] Railway (presently Bucktown).

23.

The SWB took over the operation of the 17th Street Canal at the end of the 19th century. The canal was re-dredged in 1897, and again in 1929. In 1913, the SWB completed the construction of Pumping Station No. 6, which drained a large portion of New Orleans through the canal. Until recent years, the 17th Street Canal was home to a fleet of approximately one hundred shrimp boats. The fleet previously had a lease agreement with the defendant SWB.

24.

The 17th Street Canal historically is, and at all times pertinent herein has been, a navigable waterway in New Orleans that flows into Lake Ponchatrain [sic].

B. The 17th Street Canal Dredging Project

25.

On July 15, 1974, the SWB initiated a project to improve drainage through the 17th Street Canal. Initially, this project called for the dredging of 2.4 miles of the canal from Pump Station No. 6 to Lake Ponchatrain [sic] to remove sediment from the canal bottom and to reshape the canal cross-section for the improvement of flow and the pump capacity of Pump Station No. 6. The removal of approximately 85,000 cubic yards of bottom sediment was anticipated.

26.

Because dredging projects in navigable waters of the United States require a Department of the Army permit pursuant to the River & Harbors Act, the SWB filed an application with the Corps for a "Permit to Discharge or Work in Navigable Waters and their Tributaries." The Operations Division of the Corps is responsible for the issuance of permits to dredge navigable waterways. Hence, the issuance of the dredging permit for the 17th Street Canal was the province of the Corps' Operating Division, and not, for example, the Corps' Engineering Division, which is responsible for flood control.

27.

The permit approval process required the SWB to also obtain approval from, among others, the Louisiana

Department of Public Works. In August of 1974, the Louisiana Department of Public Works responded to the 17th Street Canal dredge permit application by stating it could not complete a review of the application because the applicant (SWB) ***had no soil data substantiating the stability or integrity of the canal's levees***.

28.

On May 23, 1977, the Corps returned the dredging application with no action because the SWB had failed to furnish information requested by, among others, the Louisiana Department of Public Works.

29.

In 1978, the SWB retained a civil engineering firm, Modjeski and Masters, Inc. ("M&M") to provide a plan for the design and implementation of the dredging project. On August 23, 1979, M&M submitted a second dredging permit application on behalf of the SWB. On December 29, 1980, M&M re-submitted the dredging permit application after environmental concerns were raised relative to the disposal of the dredged material in Lake Ponchatrain [sic] and on the banks of the canal.

30.

On January 28, 1981, M&M, in response to inquiries about the impact of the dredging on existing

levees, issued the Corps with a memorandum addressing the stability of the existing levees and sheet pile wall along the canal. M&M's memorandum indicated that at three of the six test locations, the factors of safety ***fell below the required values set by the Corps***. The handwritten report specifically stated that "***two locations yielded low factors of safety due to . . . the existence of very soft clays***."

31.

On March 5, 1981, the Corps issued an internal memorandum addressing the soil stability analyses provided by M&M which acknowledged that, in connection with the proposed dredging of the canal, safety factors were substantially below the minimum 1.30 factor of safety, requiring that the project be redesigned. The specific location of the canal's levee system to which this internal memorandum referred coincides with the area where the 17th Street Canal breached during Hurricane Katrina.

32.

On March 31, 1981, the Corps held a public hearing regarding the 17th Street Canal dredging permit application. Discussions took place regarding whether raising the existing sheet pile wall along the canal, as opposed to dredging to deepen the canal, would provide a greater cross-section and greater pump capacity. The consulting engineer representing M&M voiced his concerns about widening the canals

and stated that ***not only were the levees already in violation of the Corps's engineering standards for levee stability, but that dredging attempts to remove material adjacent to the levees would only worsen the stability problem***.

33.

On April 20, 1981, in response to concerns that the proposed dredging of the 17th Street Canal would negatively impact the existing canal levee, M&M announced a preliminary plan to install sheet pile walls with concrete caps prior to any dredging or excavation. The sheet pile walls were to be of a sufficient height to meet all applicable flood protection criteria. An internal Corps memorandum dated June 16, 1981, based on a review of this proposal by M&M, acknowledged that a number of levee and flood wall stability problems were likely to occur should the SWB dredging be granted.

34.

An internal memorandum from the Corps' Engineering Division to the Corps' Operations Division, dated February 12, 1982, noted the existence of a stability problem in the 17th Street Canal at a location where excavation would directly tap the sands underlying the levee. The memorandum suggested that a stability analysis be performed for the land side of the canal, incorporating effects of seepage to determine what corrective action might be needed.

Sands underlay the entire 2.4 miles of the 17th Street Canal, from Pumping Station No. 6 to Lake Ponchatrain [sic], and the stability problem recognized in this memorandum, therefore, cannot be confined to any one section of the canal.

35.

On August 23, 1982, Eustis Engineering Company ("Eustis") provided M&M with a more comprehensive subsoil investigation report, which in pertinent part recognized that measures "should be taken" because of "the possibility of a blow-out during extreme high water in the canal." The report also identified "preventive measures," including, "the installation of a seepage cutoff through the levee crown, installation of pressure relief wells near the land side toe of the levee, and sealing the canal bottom." Eustis's recommendations were restricted to only specific areas of the canal, however, and not to the entire canal levee system. On November 30, 1982, M&M furnished the Corps with copies of Eustis's soil investigation report.

36.

On February 22, 1983, the Chief of the Corps' Engineering Division advised the SWB that the Corps believed "the installation of relief wells would be an appropriate way to provide the necessary assurance against uplift" of the 17th Street Canal's sheet piles.

37.

On May 9, 1983, M&M submitted on behalf of the SWB a new permit application for the 17th Street Drainage Canal Improvement Project. This application was to supersede the application for Phase I, submitted on December 29, 1980, and Phase II, submitted on April 20, 1981, by combining the two phases into one project with the project limits being Pump Station No. 6 on the south and 370.0 feet north of the Bucktown Pedestrian Bridge. The project now envisioned the ***removal of 470,000 cubic yards*** of canal bottom whereas the original plan called for the removal of 85,000 cubic yards.

38.

On July 27, 1983, Eustis submitted a revised soil stability report, which both confirmed the potential for a blow-out at the land side toe of the levee and extended the area of concern to be pumping station. In this report, Eustis recommended dredging a test section in the 17th Street Canal to study the hydrostatic uplift pressure.

39.

From November 29 to December 16, 1983, a test section was dug just south of Interstate 10. Six piezometers were installed on the Jefferson Parish side of the 17th Street Canal to closely monitor changes in the hydrostatic pressures before, during, and after completion of the excavation. Eustis submitted a

report on the test dredging to the Corps on January 17, 1984. The report concluded that the piezometers monitored no relevant changes upon the dredging of the test section. The report further concluded that the possibility of a blow-out during high water conditions in the canal was probably slight. However, the piezometer study of the test section did not account for the pre-existing, permeable soils of the canal, and therefore, the study's conclusions as to stability and permeability were unreliable.

40.

On June 13, 1984, the Corps issued a permit to "dredge to enlarge and maintain an area and install and maintain flood walls and mooring structures, in the 17th Street Canal (Metairie Relief Canal) from Pumping Station No. 6 to a point about 400 feet north of the Bucktown Pedestrian Bridge . . . " The "Statement of Findings" issued with the permit stated that factors considered in issuing the permit included, *inter alia*, "navigation," both present and prospective flood heights and flood plain use, and "other public interests."

41.

The dredging project was ultimately divided into the following phases: Phase I from Pump Station No. 6 to Interstate 10; Phase II-A from Interstate 10 to Hammond Highway – Orleans side; Phase II-B from Interstate 10 to Hammond Highway – Jefferson side;

and Phase III from Hammond Highway to Lake Ponchatrain [sic].

42.

Phase I was completed June 1, 1984. However, because the SWB and the OLD could not reach an agreement with EJLD regarding Phase II of the Project, an extension of the permit work was granted by the Corps on February 20, 1987.

43.

On April 24, 1987, the Corps created a drawing with a sheet pile design that indicated that the sheet pile tips were located 16 feet lower than the bottom of the 17th Street Canal. Even as the Operations Division of the Corps was addressing the SWB permit, therefore, the defendant's Engineering Division was addressing levee wall design that might incorporate the sheet piles that were permitted under the dredging project.

44.

On August 11, 1988, the SWB issued the work order for Phase III of the dredging project, and the job was completed on December 6, 1989. The work order for Phase II-A of the dredging project, which included the installation of the sheet piles on the Orleans Parish side of the canal, was issued on July 4, 1990,

and the job was completed on January 10, 1992 by Boh Bros. Construction Co., Inc.

45.

The dredging activity conducted in the 17th Street Canal pursuant to the SWB permit was specified contractually to entail "bucket dredging" from a series of flex-float barges in the canal. The barges constituted vessels in navigation for the time period during which the dredging occurred.

C. The Construction of 17th Street Canal Concrete Monoliths

46.

Without any Congressional authorization or reauthorization, the Corps unilaterally deviated from a Congressionally-authorized "Barrier Plan," which called for the installation of floodgates at the mouth of the 17th Street Canal (at Lake Ponchatrain [sic]). Defendants SWB and OLD objected to the installation of these floodgates. The Corps thereafter proposed a "Parallel Protection Plan" for the 17th Street Canal, which called for increasing the height of the flood barriers on the east and west banks of the canal. This was part of an overall "High Level Plan," which replaced the "Barrier Plan" even though this change was not authorized by Congress.

47.

In connection with the "High Level Plan," the Corps considered three options – levees, T-walls, and I-walls. The Corps rejected the use of levees and T-walls because such construction was purportedly not economically justified. Instead, under the auspices of the Corps acting in connection with the OLD, the 17th Street Canal's flood walls were constructed with an "I-wall" design which called for the construction of a concrete monolith on top of the existing sheet pile (in place from the dredging project).

48.

The U.S. Army Corps of Engineers Manual on Engineering, Design and Construction of Levees, dated April 30, 2000, states that for stability reasons, flood walls utilizing the "I-wall" design rarely exceed seven (7) feet above ground surface, and that an inverted "T-wall" design is used when walls higher than seven feet are required. ***Nonetheless, the I-walls on the 17th Street Canal were built in concrete sections that rise eleven (11) feet about the ground.***

49.

Further, upon information and belief, Eustis performed a soil analysis in 1981, which entailed borings along the 17th Street Canal's levee. The borings revealed alternating layers of soft clay and black humus or peat – a soft, spongy soil comprised of decaying trees and other organic material – located

fifteen to twenty-one feet below sea level. This layer of humus and peat substantially reduced the strength of the soil, particularly its strength in resisting lateral pressure and its ability to support the levee and flood walls under pressure from flood water.

50.

However, despite Eustis's findings regarding the weak soil, the Corps elected to build the walls of the 17th Street Canal with steel sheet piling driven to a depth that was seventeen (17) feet below sea level – either above or in the middle of the layers of weak soil. To make matters worse, the soil adjacent to the 17th Street Canal levee subsided significantly after construction of the levee and flood wall, greatly reducing the amount of support that the land behind the levee provided against the pressure of flood waters.

51.

Then, in 1993, C.R. Pittman Construction Company, Inc. ("Pittman") was retained for the construction of the concrete monoliths atop the steel sheet pile wall along the 17th Street Canal. Pittman reported to the Corps that it was encountering major problems – specifically, the sheet pile walls and concrete monoliths were beginning to lean towards the canal side as the soil foundation was not of sufficient strength, rigidity and stability. Despite these concerns and problems, however, the Corps allowed the construction

of the I-walls to continue, and Pittman built the concrete monoliths on top of the sheet pile driven into the unstable soil.

52.

Altogether, Defendants either failed to account for the soil and flood wall stability problems associated with the 17th Street Canal or proceeded with the engineering, design, and construction of the 17th Street Canal despite such problems. As the result of Defendants' combined negligence, the 17th Street Canal failed during Hurricane Katrina, flooding the surrounding area and causing extensive damage to Plaintiff's property.

FACTUAL BACKGROUND REGARDING THE LONDON AVENUE CANAL

53.

The London Avenue Canal was constructed in the first half of the 19th century through an area that was mostly swampland and later became part of the City of New Orleans. The canal originally served a dual purpose of commerce and drainage, *i.e.*, it both permitted small boat traffic from Lake Ponchatrain [sic] to a section of New Orleans and provided for swamp drainage.

54.

The London Avenue Canal historically is, and at all times pertinent herein has been, a navigable waterway within the meaning of the general maritime law.

55.

The Corps, in coordination with the OLD and SWB, was responsible for the design and construction of the London Avenue Canal's levee system.

56.

A major project to upgrade the flood walls and bridges along the London Avenue Canal began in the early 1980's. The Corps had previously proposed placing a floodgate at the hurricane levees where the London Avenue Canal entered Lake Ponchatrain [sic] to provide protection from storm surge. The OLD and SWB, however, objected to this plan and instead favored building and raising the height of the parallel flood walls and levee structures along each side of the canal (the aforementioned "Parallel Protection Plan"). By 1991, the Corps, OLD and SWB had decided to proceed with this latter plan.

57.

The resulting flood walls along the London Avenue Canal were constructed atop earthen levees with an "I-wall" design consisting of steel sheet

pilings driven into the compacted dirt atop the levee with reinforcing steel rods threaded through the top of the piling. Concrete was poured to encapsulate the top of the pilings and form the wall. The wall is composed of individual concrete slab sections (monoliths) that are linked together by rubbery gaskets (water stops) intended to prevent water from flowing between the monoliths and to allow the concrete to expand and contract.

58.

The entirety of the London Avenue Canal is constructed over beach sands of the Pine Island trend. The sands are located approximately 13 to 15 feet below the crowns of the I-wall levees of the canal, but are deeper at the vicinity where the northern breach occurred during Hurricane Katrina (station 113 to 118). The sand is covered with a veneer of peaty swamp deposits.

59.

Two key considerations in constructing an I-wall atop an earthen levee are 1) the composition of the soil into which the sheet piles will be driven and upon which the I-walls will rest and 2) the depth of the sheet piles based on the composition of the soil.

60.

Soil borings of the levee at the site of the London Avenue Canal south breach, which contributed to the catastrophe giving rise to this litigation, showed a layer of sand at a depth of 10 to 15 feet below sea level. Similar to the conditions at the south breach, soil borings of the levee at the site of London Avenue Canal north breach showed a layer of sand at a depth of 12 feet below sea level, as well as a layer of peat – a highly porous material that shrinks when dry and expands when wet, creating highly unstable soil conditions. Despite this layer of unstable sand, the sheet piles supporting the flood wall monoliths of the London Avenue Canal were driven to a depth of 14 feet below sea level. ***Thus, the bottom of the sheet piles fell within a layer of sand.***

61.

As discussed *supra*, the flood walls along the London Avenue Canal are constructed with an "I-wall" design. The U.S. Army Corps of Engineers Manual on Engineering, Design and Construction of Levees dated April 30, 2000 states that, for stability reasons, flood walls utilizing the "I-wall" design rarely exceed seven (7) feet above ground surface and that an inverted "T-wall" design is used when walls higher than seven feet are required. ***Nonetheless, the flood walls at the breach sites of the London Avenue Canal, although built with an "I-wall" design, have concrete sections that rise to eleven (11) feet above ground surface.***

62.

Altogether, Defendants either failed to account for the soil and flood wall stability problems associated with the London Avenue Canal or proceeded with the engineering, design, and construction of the London Avenue Canal despite such problems. As the result of Defendants' combined negligence, the London Avenue Canal failed during Hurricane Katrina, flooding the surrounding area and causing extensive damage to Plaintiff's property.

FACTUAL BACKGROUND REGARDING THE ORLEANS AVENUE CANAL

63.

The Orleans Avenue Canal is a drainage canal located in Orleans Parish and is connected on its north end to Lake Pontchartrain and on its south end with the SWB's Pumping Station No. 7.

64.

The levee and floodwall protection system along the Orleans Canal was incomplete at the time Hurricane Katrina struck the New Orleans area. Specifically, the embankment fronting the pump station, which is about four hundred feet long, is six feet lower than the floodwalls along the canal. That is, the floodwalls in this area are simply missing. As a result, the levee and floodwall protection system designed and constructed by Defendants was incomplete and

did not provide adequate flood protection for the surrounding area, causing extensive water damage to Plaintiff's property.

FACTUAL BACKGROUND REGARDING HURRICANE KATRINA AND THE FAILURE OF THE 17TH STREET, LONDON AVENUE, AND ORLEANS AVENUE CANALS

65.

Hurricane Katrina made landfall at 6:10 a.m. near Buras, Louisiana, on the morning of Monday, August 29, 2005 with estimated maximum winds of 117 mph.

66.

On August 29, 2005, a major breach of 17th Street Canal occurred on the Orleans Parish side of the canal between 9:00 a.m. and 9:15 a.m. The breach rapidly scoured to depths below mean sea level, allowing lake and canal water to flow through the Orleans Parish bank of the canal well after the storm surge had subsided.

67.

The flooding as a result of the breach of the 17th Street Canal was totally catastrophic, and caused extensive damage to Plaintiff's property located at [Home Address Omitted].

68.

Upon information and belief, water began to enter the Gentilly area east of the London Avenue Canal between 7:00 and 8:00 a.m. on August 29, 2005, pouring through a 200-foot wide breach in the levee/flood wall on the east side of the London Avenue Canal, just north of the Mariabeau Avenue bridge. This breach is referred to as the "south breach" of the London Avenue Canal levee.

69.

The water from the south breach of the London Avenue Canal initially inundated the Gentilly area of New Orleans, an area bounded on the west by the London Avenue Canal, on the south by Gentilly Boulevard (the Metairie/Gentilly Ridge), on the east by the Inner Harbor Navigational Canal (the Industrial Canal) and on the north by Lake Ponchatrain [sic]. This water eventually combined with flood waters from other levee breaches inundating other parts of New Orleans, including Plaintiff's property located at [Home Address Omitted].

70.

Upon information and belief, water began to enter the Gentilly area west of the London Avenue Canal sometime before 9:00 a.m. on August 29, 2005, pouring through a 400-foot wide breach in the levee/flood wall on the west side of the London Avenue Canal, just south of the Robert E. Lee Bridge. This is

referred to as the "north breach" of the London Avenue Canal levee.

71.

The water from the north breach of the London Avenue Canal initially inundated the Gentilly area of the city bounded on the west by Bayou St. John, on the north by Lake Ponchatrain [sic], on the east by the London Avenue Canal, and along the southeastern side on a line drawn along Chef Menteur Highway to Gentilly Boulevard to Broad Street where it intersects with Orleans Avenue and then northwest along Orleans Avenue to Bayou St. John. This water eventually combined with flood waters from other levee breaches, inundating other parts of New Orleans, including Plaintiff's property located at [Home Address Omitted].

72.

Upon information and belief, at approximately 9:00 a.m. on August 29, 2005, as a result of Defendants' inadequate design and construction of the floodwalls along the Orleans Avenue Canal, the embankment fronting the pump station at the foot of the canal was overtopped and left unprotected by missing floodwalls, causing significant water damage to the surrounding area.

73.

Notably, the storm surge associated with Hurricane Katrina did not overtop the flood walls at the sites of the 17th Street, London Avenue, and Orleans Avenue Canals. Indeed, the hurricane did not exceed the designed parameters for these canals. Thus, none of the flood wall breaches in question would have occurred as a result of Hurricane Katrina alone. Rather, these breaches occurred solely as a result of Defendants' faulty and negligent engineering, design, construction, and maintenance of the 17th Street, London Avenue, and Orleans Avenue Canals.

FACTUAL BACKGROUND REGARDING THE "LAKE PONTCHARTRAIN, LOUISIANA AND VICINITY, HURRICANE PROTECTION PROJECT"

74.

The majority of the levee and/or I-wall structures surrounding the New Orleans metropolitan area were constructed, in part, under the authority of the "Lake Pontchartrain, Louisiana and Vicinity, Hurricane Protection Project" ("Lake Pontchartrain Project"). Congress first authorized the implementation of the Lake Pontchartrain Project in the Flood Control Act of 1965 to provide hurricane protection to the areas surrounding Lake Pontchartrain. The Corps was primarily responsible for the project's design and construction.

75.

The Corps based its design and construction of the Lake Pontchartrain Project on the 1959 Standard Project Hurricane, which the Corps knew to be obsolete by 1972 when the construction of the Lake Pontchartrain Project actually began. As a result, the Corps designed and constructed the levees and floodwalls associated with the Lake Pontchartrain Project (including the 17th Street, London Avenue, and Orleans Avenue Canals) based on outdated specifications, leaving the hurricane protection system deficient and subjecting the New Orleans area to an increased threat of flooding.

76.

Additionally, as discussed *supra*, the Corps rejected the Congressionally-authorized Barrier Plan that called for a series of levees and other flood control structures, including barriers and flood control gates, to prevent storm surges from entering Lake Pontchartrain in the event of a hurricane. The Barrier Plan was purposefully selected by Congress over another alternative, the High-Level Plan, which would have excluded the barriers and flood control gates called for by the Barrier Plan and replaced them with higher levees and flood protection structures along the lakefront and other areas. Congress rejected the High-Level Plan because it was seriously flawed in many respects, including, but not limited to, prolonged construction time, displacement

of residences, less efficient floodwalls, a hampered interior drainage system, less protection to the Northshore, and increased cost.

77.

Despite Congress's approval of the Barrier Plan and rejection of the High-Level Plan, Defendants elected to implement the High-Level Plan without obtaining the required authorization from Congress and knowing of the High-Level Plan's deficiencies.

78.

By the mid 1980s, as more residences were built along the canals, the Corps proposed to provide greater protection from storm surge by implementing a parallel protection plan that called for raising the height of the existing levees and sheet pile floodwalls along each side of the canals. As discussed, *supra*, when implementing this parallel protection plan, Defendants elected to use I-walls rather than T-walls which would have provided a higher level of stability and reliability, especially in soft soil conditions. Construction of the I-walls along the 17th Street, London Avenue and Orleans Avenue Canals was completed by the end of the 1990s.

79.

On or about August 29, 2005, the I-walls designed and constructed by Defendants along the 17th

Street and London Avenue Canals failed catastrophically due to Defendants' unauthorized, negligent, wanton and/or reckless, and unilateral decision to abandon the Congressionally-authorized Barrier Plan and implement the flawed parallel protection plan utilizing the I-wall design.

FACTUAL BACKGROUND REGARDING THE IPET REPORT

80.

The Corps has conceded that the failure of the New Orleans levee system, including the failure of the 17th Street, London Avenue, and Orleans Avenue Canals, was caused by the inadequate design, planning, and construction of the system's levees and floodwalls. Following Hurricane Katrina, the Corps undertook a massive investigation of the reason for the levee and flood wall failures. This investigation was coordinated by the Interagency Performance Evaluation Taskforce. ("IPET"). On March 26, 2007, IPET issued its Interim Final and Final Reports concerning the Performance Evaluation of the New Orleans and Southeast Louisiana Hurricane Protection System ("IPET Report").

81.

IPET was created by the Chief of Engineers, U.S. Army Corps of Engineers to evaluate the New Orleans hurricane protection system in light of Hurricane Katrina. IPET consisted of government, academic, and

private sector scientists and engineers with extensive experience in the field of civil engineering. The report was consistently peer reviewed prior to publication.

82.

The IPET Report provides extensive background regarding the construction of the hurricane protection system and reveals that, almost from the start, construction was based on inaccurate assumptions and calculations. IPET found that deficiencies existed throughout the levee system, which was constructed at an elevation below design specifications.

83.

Overall, IPET summed up its analysis of the hurricane protection system with the concession that is performance was compromised by the incompleteness of the system, the inconsistency in levels of protection, and the lack of redundancy. Volume I of the IPET Report made the following overall conclusions regarding the failure of the levees:

- Flood control structures in the region were authorized and designed relative to a water level datum (mean sea level), but constructed relative to a geodectic vertical datum ***incorrectly assumed to be equivalent to the water level datum. This resulted, in the case of the outfall canals, in structures built approximately 1 to 2 ft below the intended elevation***.

- Sections of the system were built below specified design elevations due to the ***use of an inaccurate relationship between the geodectic datum and mean sea level datum***.

- Coupled with the ***use of average values*** obtained from widely spaced samples in a geology with highly variable conditions, the structure was left ***with a marginal factor of safety***.

- The structures were constructed on weak and compressible soils.

- The hurricane protection in New Orleans was designed and developed in a piecemeal fashion, resulting in inconsistent levels of protection.

- ***Four breaches***, all in the outfall canals and all involving I-walls, ***occurred before water levels reached the top of the floodwalls. All were caused by foundation failures*** induced by the formation of a gap along the canal side of the floodwall. . . . ***This failure mechanism***, in particular the gap formation, ***was not considered in the original design of the structure***.

- The maintained condition of the levees was an additional negative factor in the performance of the system.

DAMAGES SUSTAINED BY PLAINTIFF

84.

Plaintiff avers that, to date, she has sustained total damages in the amount of $500,000.00, as a direct and proximate result of the negligence and/or fault of the Defendants herein. Plaintiff further avers that she continues to sustain damages as a direct and proximate result of the negligence and/or fault of the Defendants herein.

COUNT I:

NEGLIGENCE OF DEFENDANTS IN THE DREDGING OF THE 17TH STREET CANAL

85.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as though fully set forth herein.

86.

The Corps, OLD, EJLD, and SWB had the legal responsibility and duty to Plaintiff to cause, allow, and/or conduct the dredging of the 17th Street Canal in a manner that would not compromise the safety of the canal's levee/flood wall system. As discussed *supra*, the Corps, OLD, ELD [sic], and SWB ignored federal regulations and engineering standards and entirely disregarded overwhelming evidence that the dredging of the 17th Street Canal would dangerously compromise the canal's flood protection levee.

87.

As a result of the negligence of the Corps, OLD, ELD [sic], and SWB, the dredging of the 17th Street Canal worsened the stability of the canal's levee and flood walls and eventually contributed to the failure of the canal during Hurricane Katrina, causing extensive damage to Plaintiff. Defendants St. Paul and National Union, as the insurers of OLD and EJLD, are directly liable to Plaintiff for her damages.

88.

As a direct and proximate result of the negligence of the Corps, OLD, ELD [sic], and SWB in the dredging of the 17th Street Canal, Plaintiff suffered extensive damage, including, but not limited to, loss of property (both immovable and movable), diminution of property value, evacuation expenses, additional living expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial.

COUNT II:

NEGLIGENCE OF DEFENDANTS IN THE DESIGN, CONSTRUCTION AND MAINTENANCE OF THE 17TH STREET CANAL LEVEES AND FLOOD WALLS

89.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as through fully set forth herein.

90.

The Corps, OLD, ELD [sic], and SWB had a legal responsibility and duty to Plaintiff to cause, allow, and/or conduct the design and construction of the levees and flood walls of the 17th Street Canal in a manner that would not compromise the safety of the canal's levee/flood wall system. As discussed *supra*, the Corps, ELD [sic], and SWB knew or should have known of the deficiencies in the design and construction of the 17th Street Canal, particularly given the nature of the soil in the area and the height and instability of the I-walls.

91.

The Corps, OLD, ELD [sic], and SWB negligently abandoned a Congressionally-authorized plan to install floodgates at the 17th Street Canal which would have lessened the storm surge form Hurricane Katrina, opting instead to use a "parallel" plan pursuant to

which the 17th Street Canal levee and flood wall system was inadequately designed and built.

92.

The Corps, OLD, ELD [sic], and SWB negligently ignored multiple reports regarding the weak and unstable sand and soil below the 17th Street Canal and negligently designed and constructed the 17th Street Canal with I-walls built at 11 feet above ground, despite engineering guidelines discouraging the use of I-walls at heights greater than 7 feet above ground.

93.

The Corps, OLD, ELD [sic], and SWB negligently failed to properly maintain and inspect the 17th Street Canal levee/flood wall system which would have led to the correction of or exposure of its deficiencies such that the failure of the system could have been prevented.

94.

As a result of the negligence of the Corps, OLD, ELD [sic], and SWB, the design and construction of the 17th Street Canal worsened the stability of the canal's levee and flood walls and eventually contributed to the failure of the canal during Hurricane Katrina, causing extensive damage to Plaintiff. Defendants St. Paul and National Union, as the insurers of

OLD and EJLD, are directly liable to Plaintiff for its damages.

95.

As a direct and proximate result of the negligence of the Corps, OLD, ELD [sic], and SWB in the design, construction, and maintenance of the 17th Street Canal, Plaintiff suffered extensive damage, including, but not limited to, loss of property (both immovable and movable), diminution of property value, evacuation expenses, additional living expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial.

COUNT III:

NEGLIGENCE OF DEFENDANTS IN THE DESIGN, CONSTRUCTION AND MAINTENANCE OF THE LONDON AVENUE CANAL LEVEES AND FLOODWALLS

96.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as through fully set forth herein.

97.

The Corps, OLD, ELD [sic], and SWB had a legal responsibility and duty to Plaintiff to cause, allow, and/or conduct the design and construction of the

levees and flood walls of the London Avenue Canal in a manner that would not compromise the safety of the canal's levee/flood wall system. As discussed *supra*, the Corps, OLD, ELD [sic], and SWB knew or should have known of the deficiencies in the design and construction of the London Avenue Canal, particularly given the nature of the sand and soil in the area and the height and instability of the I-walls.

98.

The Corps, OLD, ELD [sic], and SWB negligently abandoned a Congressionally-authorized plan to install floodgates at the London Avenue Canal which would have lessened the storm surge form Hurricane Katrina, opting instead to use a "parallel" plan pursuant to which the London Avenue Canal levee and flood wall system was inadequately designed and built.

99.

The Corps, OLD, ELD [sic], and SWB negligently entirely ignored multiple reports regarding the weak and unstable sand and soil below the London Avenue Canal and negligently designed and constructed the London Avenue Canal with I-walls built at 11 feet above ground, despite engineering guidelines discouraging the use of I-walls at heights greater than 7 feet above ground.

100.

The Corps, OLD, ELD [sic], and SWB negligently failed to properly maintain and inspect the London Avenue Canal levee/flood wall system which would have led to the correction of or exposure of its deficiencies such that the failure of the system could have been prevented.

101.

As a result of the negligence of the Corps, OLD, ELD [sic], and SWB, the design and construction of the London Avenue Canal worsened the stability of the canal's levee and flood walls and eventually contributed to the failure of the canal during Hurricane Katrina, causing extensive damage to Plaintiff. Defendants St. Paul and National Union, as the insurers of OLD and EJLD, are directly liable to Plaintiff for her damages.

102.

As a direct and proximate result of negligence of the Corps, OLD, ELD [sic], and SWB in the design, construction, and maintenance of the London Avenue Canal, Plaintiff suffered extensive damage, including, but not limited to, loss of property (both immovable and movable), diminution of property value, evacuation expenses, additional living expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial.

COUNT IV:

NEGLIGENCE OF DEFENDANTS IN DESIGN, CONSTRUCTION AND MAINTENANCE OF THE ORLEANS AVENUE CANAL LEVEES AND FLOODWALLS

103.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as through fully set forth herein.

104.

The Corps, OLD, ELD [sic], and SWB had a legal responsibility and duty to Plaintiff to cause, allow, and/or conduct the design and construction of the levees and flood walls of the Orleans Avenue Canal in a manner that would not compromise the safety of the canal's levee/flood wall system. As discussed *supra*, the Corps, OLD, ELD [sic], and SWB knew or should have known of the deficiencies in the design and construction of the Orleans Avenue Canal, particularly given the embankment fronting the pump station at the foot of the canal that was left unprotected by missing floodwalls.

105.

As a result of the negligence of the Corps, OLD, ELD [sic], and SWB, the design and construction of the Orleans Avenue Canal failed to provide adequate flood protection to the surrounding area, causing

extensive damage to Plaintiff. Defendants St. Paul and National Union, as the insurers of OLD and EJLD, are directly liable to Plaintiff for her damages.

106.

As a direct and proximate result of the negligence of the Corps, OLD, ELD [sic], and SWB in the design, construction, and maintenance of the London Avenue Canal, Plaintiff suffered extensive damage, including, but not limited to, loss of property (both immovable and movable), diminution of property value, evacuation expenses, additional living expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial.

COUNT IV:

DEFENDANTS' NEGLIGENCE IN IMPLEMENTING THE "LAKE PONTCHARTRAIN, LOUISIANA AND VICINITY, HURRICANE PROTECTION PROJECT"

107.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as through fully set forth herein.

108.

The Corps, OLD, ELD [sic], and SWB had a legal responsibility and duty to Plaintiff to cause, allow, and/or conduct the implementation of the Lake Pontchartrain Project in a manner that would not compromise the safety of the hurricane protection system. As discussed *supra*, the Corps, OLD, ELD [sic], and SWB knew or should have known of the deficiencies in the implementation of the Lake Pontchartrain Project as the Corps, OLD, ELD [sic], and SWB purposefully rejected the Congressionally-authorized Barrier Plan and instead implemented a parallel protection plan utilizing a flawed I-wall design.

109.

As a result of the negligence of the Corps, OLD, ELD [sic], and SWB, the 17th Street and London Avenue Canals failed catastrophically, causing Plaintiff to suffer extensive damage, including, but not limited to, loss of property (both immovable and movable), diminution of property value, evacuation expenses, additional living expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial. Defendants St. Paul and National Union, as the insurers of OLD and EJLD, are directly liable to Plaintiff for her damages.

COUNT V:

STRICT LIABILITY

110.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as through fully set forth herein.

111.

The Corps, OLD, ELD [sic], and SWB had, at all relevant times, the care, custody and control. and thus the *garde* of the 17th Street, London Avenue, and Orleans Avenue Canals and the levees/floodwalls adjacent thereto. As such they are strictly liable to Plaintiff for his damages resulting from the vices and/or defects within these canals and their levees/floodwalls, in accordance with Louisiana Civil Code article 2317, *et seq.*

112.

The Corps, OLD, ELD [sic], and SWB knew, or in the exercise of reasonable care should have known, of the vices that caused Plaintiff's damages. Defendants St. Paul and National Union, as the insurers of OLD and EJLD, are directly liable for Plaintiff's injuries. Further, in the exercise of reasonable care by the Corps, OLD, ELD [sic], and SWB, Plaintiff's damages could have been prevented.

113.

Plaintiff expressly pleads the doctrine of *Res Ipsa Loquitur* against each and all of the Defendants, as may be appropriate under the circumstances and permitted by law.

COUNT VI:

NUISANCE

114.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as through fully set forth herein.

115.

As the proprietors of the 17th Street, London Avenue, and Orleans Avenue Canals, the Corps, OLD, ELD [sic], and SWB had a duty, pursuant to Louisiana Civil Code article 667, to refrain from creating a nuisance with respect to these canals. Because of the negligence of the Corps, OLD, ELD [sic], and SWB, however, Plaintiff has been deprived from the enjoyment of his property. Thus, the Corps, OLD, ELD [sic], and SWB have created a nuisance by ignoring the hazardous conditions in the 17th Street, London Avenue, and Orleans Avenue Canals. Defendants St. Paul and National Union, as the insurers of OLD and EJSD, are directly liable to Plaintiff for her damages.

116.

Defendants have violated the common law doctrine of nuisance. The negligent and/or reckless actions of Defendants in creating and ignoring the hazardous conditions in the hurricane protection system have caused unique and significant harm as discussed *supra* and have deprived Plaintiff from the use and enjoyment of its property. Thus, Defendants are liable for Plaintiff's damages As a result of Defendants' creation of a nuisance and violation of their federal common law duty, Plaintiff suffered extensive damage, including, but not limited to, loss of property (both immovable and movable), diminution of property value, evacuation expenses, additional living expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that:

(1) Defendants be held liable for all of Plaintiff's damages caused by Defendants' negligence in the dredging of the 17th Street Canal, including, but not limited to, Plaintiff's loss of property (both immovable and movable), diminution of property value, evacuation expenses, additional living expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial;

(2) Defendants be held liable for all of Plaintiff's damages caused by Defendants' negligence in the design, construction, and maintenance of the 17th Street Canal, including, but not limited to, Plaintiff's loss of property (both immovable and movable), diminution of property value, evacuation expenses, additional living expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial;

(3) Defendants be held liable for all of Plaintiff's damages caused by Defendants' negligence in the design, construction, and maintenance of the London Avenue Canal, including, but not limited to, Plaintiff's loss of property (both immovable and movable), diminution of property value, evacuation expenses, additional living expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial;

(4) Defendants be held liable for all of Plaintiff's damages caused by Defendants' negligence in the design, construction, and maintenance of the Orleans Avenue Canal, including, but not limited to, Plaintiff's loss of property (both immovable and movable), diminution of property value, evacuation expenses, additional living expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial;

(5) Defendants be held liable for all of Plaintiff's damages caused by Defendants' negligence in the implementation of the Lake Pontchartrain Project,

including, but not limited to, Plaintiff's loss of property (both immovable and movable), diminution of property value, evacuation expenses, additional living expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial;

(6) Defendants be held strictly liable for Plaintiff's damages resulting from the vices and/or defects within these canals and their levees/floodwalls, in accordance with Louisiana Civil Code article 2317, *et seq.* and the doctrine of *Res Ipsa Loquitur*;

(7) Defendants be held liable for Plaintiff's damages resulting from Defendants' creation of a nuisance in creating and ignoring the hazardous conditions of the 17th Street, London Avenue and Orleans Avenue Canals.

(8) Defendants be held liable for all of Plaintiff's attorneys fees and costs associated with this litigation pursuant to the Federal Tort Claims Act and/or the Equal Access to Judgments Act;

(9) Defendants be held liable for all pre-judgment and post-judgment interest on all amounts awarded to Plaintiff; and

(10) Any other equitable and general relief in the nature of this case will allow.

/s/ Martha Y. Curtis
MARTHA Y. CURTIS
20446 (T.A.)
CHRISTOPHER T. CHOCHELES
#26848
SHER GARNER CAHILL RICHTER KLEIN & HILBERT, L.L.C.
909 Poydras Street, 27th Floor
New Orleans, Louisiana 70112
Telephone: (504) 299-2100
Facsimile: (504) 299-2300
ATTORNEYS FOR DOROTHY REESE

[SEAL] DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P.O. BOX 60267
NEW ORLEANS, LOUISIANA 70160-0267

OFFICIAL BUSINESS
CEMVN-OC

REPLY TO
ATTENTION OF

23 July 2007

Office of Counsel

JAMES M GARNER
909 POYDRAS ST 28TH FL
NEW ORLEANS LA 70112-4000

SUBJECT: Claim of DOROTHY REESE, Claim Number (07 N15T0023423)

Dear Sir or Madam:

The subject claim was received on 27 February 2007. A copy of the claim, with the date-stamp from this office reflecting the date of receipt, is attached. ***If the claim is properly presented within the prescribed statutory time limits***, it will be processed under the Federal Tort Claims Act (FTCA), Title 28, United States Code, Sections 2671-2680 or the Admiralty Extension Act (AEA), Title 46, United States Code app., Section 30101, as appropriate.

Due to the massive volume of claims filed in relation to Hurricane Katrina, ***the Army has not reviewed the attached claim and has not determined if a properly presented claim has been filed***. Accordingly, please review the attached claim

to determine if it complies with the requirements necessary to present a valid FTCA or AEA claim. The following items on the Standard Form (SF) 95 (Claim for Damage, Injury or Death) claim form ***must*** be completed to properly present a claim:

1. There must be a name in Block 2 (Name, Address of claimant and claimant's personal representative, if any); and

2. Block 8 (Basis of Claim) must include a description of the nature of the alleged damage, injury or death with sufficient information to permit the Army to investigate the merits of the claim and assign it a monetary value; and

3. An exact dollar amount must be recorded in one or more Blocks of 12a-12c (Property Damage, Personal Injury and/or Wrongful Death) and in Block 12d (Total) for the specific damages; and

4. Block 13a (Signature of Claimant) must be signed by the claimant or authorized representative who has written authority to sign the claim form on the claimant's behalf.

5. Each person wanting to present a properly filed claim must individually file his/her own claim and satisfy the above noted requirements. If multiple claimants are listed on the same claim form, each claimant must separately describe the nature of the damage, injury, or death alleged and state the specific amounts of damages each claimant is demanding.

An SF 95 claim form does not have to be used. However, the foregoing information must nevertheless be provided with the claim.

If, after reviewing the attached claim, you find one or more of the above deficiencies, the CLAIM HAS NOT BEEN PROPERLY PRESENTED and you must file a new claim with the required corrections within two years of the date of the alleged damage, injury or death in order to present a properly filed claim under the FTCA. Moreover, the filing of a new claim under the AEA will not be properly filed unless the new claim is filed within 18 months of the date of the alleged damage, injury or death.

The following general information is provided concerning the FTCA and AEA:

a. The FTCA and AEA both contain a mandatory six-month period for the administrative investigation of a properly filed claim and claim settlement.

b. The FTCA permits suit to be filed six months after the claim was filed if the Army has not taken final administrative action on the claim, provided the claim has been properly filed. Title 28, United States Code, Section 2675(a). However, filing suit is not required. If suit is not filed, the statute of limitations will be tolled until the claimant is notified by the Army in writing, by certified or registered mail, of the final denial of the claim.

c. Under the AEA, suit ***must*** be filed within 2 years after the date of the alleged damage, injury or death.

If a claim has been properly filed, there is no need to submit any additional information or respond to this letter at this time. ***However, an improperly filed claim does not toll the statute of limitations under the FTCA or AEA and a new claim must be properly filed within two years under the FTCA and 18 months under the AEA from the date of the alleged damage, injury or death.***

Sincerely,

/s/ [Illegible]
Angela Jean Drinkwitz
Claims Administrator

Enclosure

CLAIM FOR DAMAGE, INJURY OR DEATH

INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.

FORM APPROVED OMB NO. 1105-0008

1. Submit To Appropriate Federal Agency:

   United States Army Corps of Engineers
   Headquarters
   441 G Street, NW
   Washington, D.C. 20314

2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, Street, City, State and Zip Code)

   Claimant:

   Dorothy Reese
   [Home Address Omitted]
   Baton Rouge, LA 70816

   Representative:

   James M. Garner, Esq.
   909 Poydras, 28th Floor
   New Orleans, LA 70112

3. TYPE OF EMPLOYMENT

   ☐ MILITARY ☒ CIVILIAN

4. DATE OF BIRTH

5. MARITAL STATUS Married

6. DATE AND DAY OF ACCIDENT

   8/29/05-9/30/05

7. TIME (A.M. OR P.M.) Unknown

8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property

involved, the place of occurrence and the cause thereof. Use additional pages if necessary.)

On or about August 29, 2005 through September 30, 2005 the home and its contents located at [Home Address Omitted], New Orleans, LA 70122, and owned by Dorothy Reese, sustained extensive water damage caused by the levee breaches along the Mississippi River Gulf Coast Outlet ("MRGO"), Gulf Intracoastal Waterway, the Seventeenth Street Canal, and the inner Harbor Navigation Canal ("Industrial Canal"). These levee breaches were caused by the actions and/or omissions of the U.S. Army Corps of Engineers. See Judge Duval's opinion of February 2, 2007 regarding in re: Katrina Canal Breaches Consolidated Litigation, No. 05-4812m Section K(2). Mrs. Reese's injuries and damages were caused by dredges owned or chartered by the Corps of Engineers, which operated on navigable waters.

9. PROPERTY DAMAGE

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code)

Dorothy Reese owns the property located at [Home Address Omitted], New Orleans, LA 70122

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.)

The home and its contents located at [Home Address Omitted], New Orleans, LA 70122, and owned by Dorothy Reese, sustained extensive water damage caused by levee breaches due to the acts and/or omissions of the U.S. Army Corps of Engineers.

10. PERSONAL INJURY/WRONGFUL DEATH

STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM, IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT.

Mental anguish and Emotional Distress

11. WITNESSES

NAME	ADDRESS (Number, Street, City, State and Zip Code)
Dorothy Reese	[Home Address Omitted], Baton Rouge, LA 70816
Kern Reese	[Home Address Omitted], Baton Rouge, LA 70816
Dr. Robert Bea	University of California at Berkley, Department of Civil and Environmental Engineering, 212 McLaughlin, Berkley, CA 94720

12. (See Instructions on reverse.) AMOUNT OF CLAIM (in dollars)

12a. PROPERTY DAMAGE $500,000.00

12b. PERSONAL INJURY $250,000.00

12c. WRONGFUL DEATH none

12d. TOTAL (Failure to specify may cause forfeiture of your rights.) $750,000.00

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM

13a. SIGNATURE OF CLAIMANT
(See instructions on reverse side)

/s/ [Illegible]/Martha Y. Curtis

13b. Phone number of person signing form (504) 299-2102

14. DATE OF SIGNATURE 2/23/07

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM

The claimant is liable to the United States Government for the civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729.)

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS

Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)

[Bar Code Omitted In Printing]

07N15T Feb. 27, 2007
0023423

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? ☒ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

    1) Homeowners' coverage policy #031069878 through Allstate Insurance Company, P.O. Box 94054, Palatine, IL 50094

16. Have you filed a claim on your insurance carrier in this instance, and if so, is it full coverage or deductible? ☒ Yes ☐ No

    Deductible

17. If deductible, state amount. Hurricane 2.00%

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take

with reference to your claim? (It is necessary that you ascertain these facts.)

Dorothy Reese filed suit against Allstate. Her suit is still pending.

19. Do you carry public liability and property damage insurance? ☒ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

See Number 15

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items – insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES IN A *SUM CERTAIN* FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL

AGENCY WITHIN *TWO YEARS* AFTER THE CLAIM ACCRUES.

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item #12 of this form.

The amount claimed should be substantiated by competent evidence as follows:

(*a*) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(*b*) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(*c*) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(*d*) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. *Authority*: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. *Principal Purpose*: The information requested is to be used in evaluating claims.

C. *Routine Use*: See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. *Effect of Failure to Respond*: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

PAPERWORK REDUCTION ACT NOTICE

This notice is *solely* for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of

information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, D.C. 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

[SEAL] DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P.O. BOX 60267
NEW ORLEANS, LOUISIANA 70160-0267

OFFICIAL BUSINESS
CEMVN-OC

REPLY TO
ATTENTION OF

23 July 2007

Office of Counsel

JAMES M GARNER
909 POYDRAS ST 28TH FL
NEW ORLEANS LA 70112-4000

SUBJECT: Claim of DOROTHY REESE, Claim Number (07N15T0024000)

Dear Sir or Madam:

The subject claim was received on 27 February 2007. A copy of the claim, with the date-stamp from this office reflecting the date of receipt, is attached. ***If the claim is properly presented within the prescribed statutory time limits***, it will be processed under the Federal Tort Claims Act (FTCA), Title 28, United States Code, Sections 2671-2680 or the Admiralty Extension Act (AEA), Title 46, United States Code app., Section 30101, as appropriate.

Due to the massive volume of claims filed in relation to Hurricane Katrina, ***the Army has not reviewed the attached claim and has not determined if a properly presented claim has been filed***. Accordingly, please review the attached claim

to determine if it complies with the requirements necessary to present a valid FTCA or AEA claim. The following items on the Standard Form (SF) 95 (Claim for Damage, Injury or Death) claim form ***must*** be completed to properly present a claim:

1. There must be a name in Block 2 (Name, Address of claimant and claimant's personal representative, if any); and

2. Block 8 (Basis of Claim) must include a description of the nature of the alleged damage, injury or death with sufficient information to permit the Army to investigate the merits of the claim and assign it a monetary value; and

3. An exact dollar amount must be recorded in one or more Blocks of 12a-12c (Property Damage, Personal Injury and/or Wrongful Death) and in Block 12d (Total) for the specific damages; and

4. Block 13a (Signature of Claimant) must be signed by the claimant or authorized representative who has written authority to sign the claim form on the claimant's behalf.

5. Each person wanting to present a properly filed claim must individually file his/her own claim and satisfy the above noted requirements. If multiple claimants are listed on the same claim form, each claimant must separately describe the nature of the damage, injury, or death alleged and state the specific amounts of damages each claimant is demanding.

An SF 95 claim form does not have to be used. However, the foregoing information must nevertheless be provided with the claim.

If, after reviewing the attached claim, you find one or more of the above deficiencies, the CLAIM HAS NOT BEEN PROPERLY PRESENTED and you must file a new claim with the required corrections within two years of the date of the alleged damage, injury or death in order to present a properly filed claim under the FTCA. Moreover, the filing of a new claim under the AEA will not be properly filed unless the new claim is filed within 18 months of the date of the alleged damage, injury or death.

The following general information is provided concerning the FTCA and AEA:

a. The FTCA and AEA both contain a mandatory six-month period for the administrative investigation of a properly filed claim and claim settlement.

b. The FTCA permits suit to be filed six months after the claim was filed if the Army has not taken final administrative action on the claim, provided the claim has been properly filed. Title 28, United States Code, Section 2675(a). However, filing suit is not required. If suit is not filed, the statute of limitations will be tolled until the claimant is notified by the Army in writing, by certified or registered mail, of the final denial of the claim.

c. Under the AEA, suit ***must*** be filed within 2 years after the date of the alleged damage, injury or death.

If a claim has been properly filed, there is no need to submit any additional information or respond to this letter at this time. ***However, an improperly filed claim does not toll the statute of limitations under the FTCA or AEA and a new claim must be properly filed within two years under the FTCA and 18 months under the AEA from the date of the alleged damage, injury or death.***

Sincerely,

/s/ [Illegible]
Angela Jean Drinkwitz
Claims Administrator

Enclosure

CLAIM FOR DAMAGE, INJURY OR DEATH

INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.

FORM APPROVED OMB NO. 1105-0008

1. Submit To Appropriate Federal Agency:

   United States Army Corps of Engineers
   Headquarters
   441 G Street, NW
   Washington, D.C. 20314

2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, Street, City, State and Zip Code)

   Claimant:

   Dorothy Reese
   [Home Address Omitted]
   Baton Rouge, LA 70816

   Representative:

   James M. Garner, Esq.
   909 Poydras, 28th Floor
   New Orleans, LA 70112

3. TYPE OF EMPLOYMENT

   ☐ MILITARY ☒ CIVILIAN

4. DATE OF BIRTH

5. MARITAL STATUS Married

6. DATE AND DAY OF ACCIDENT

   8/29/05-9/30/05

7. TIME (A.M. OR P.M.) Unknown

8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property

involved, the place of occurrence and the cause thereof. Use additional pages if necessary.)

On or about August 29, 2005 through September 30, 2005 the home and its contents located at [Home Address Omitted], New Orleans, LA 70122, and owned by Dorothy Reese, sustained extensive water damage caused by the levee breaches along the Mississippi River Gulf Coast Outlet ("MRGO"), Gulf Intracoastal Waterway, the Seventeenth Street Canal, and the Inner Harbor Navigation Canal ("Industrial Canal"). These levee breaches were caused by the actions and/or omissions of the U.S. Army Corps of Engineers. See Judge Duval's opinion of February 2, 2007 regarding In re: Katrina Canal Breaches Consolidated Litigation, No. 05-4812m Section K(2).

9. PROPERTY DAMAGE

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code)

Dorothy Reese owns the property located at [Home Address Omitted], New Orleans, LA 70122

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.)

The home and its contents located at [Home Address Omitted], New Orleans, LA 70122, and owned by Dorothy Reese, sustained extensive water damage caused by levee breaches due to

the acts and/or omissions of the U.S. Army Corps of Engineers.

10. PERSONAL INJURY/WRONGFUL DEATH

STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM, IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT.

Mental anguish and Emotional Distress

11. WITNESSES

NAME	ADDRESS (Number, Street, City, State and Zip Code)
Dorothy Reese	[Home Address Omitted], Baton Rouge, LA 70816
Kern Reese	[Home Address Omitted], Baton Rouge, LA 70816
Dr. Robert Bea	University of California at Berkley, Department of Civil and Environmental Engineering, 212 McLaughlin, Berkley, CA 94720

12. (See Instructions on reverse.) AMOUNT OF CLAIM (in dollars)

12a. PROPERTY DAMAGE $500,000.00

12b. PERSONAL INJURY $250,000.00

12c. WRONGFUL DEATH none

12d. TOTAL (Failure to specify may cause forfeiture of your rights.) $750,000.00

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM

13a. SIGNATURE OF CLAIMANT
(See instructions on reverse side)

/s/ [Illegible]/Martha Y. Curtis

13b. Phone number of person signing form
(504) 299-2102

14. DATE OF SIGNATURE 2/23/07

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM

The claimant is liable to the United States Government for the civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729.)

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS

Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)

[Bar Code Omitted In Printing]

07N15T Feb. 27, 2007
0024000

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? ☒ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

    1) Homeowners' coverage policy #031089878 through Allstate Insurance Company, P.O. Box 94054, Palatine, IL 60094

16. Have you filed a claim on your insurance carrier in this instance, and if so, is it full coverage or deductible? ☒ Yes ☐ No

    Deductible

17. If deductible, state amount. Hurricane 2.00%

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts.)

    Dorothy Reese filed suit against Allstate. Her suit is still pending.

19. Do you carry public liability and property damage insurance? ☒ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

    See Number 15

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items – insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES IN A *SUM CERTAIN* FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN *TWO YEARS* AFTER THE CLAIM ACCRUES.

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be

contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item #12 of this form.

The amount claimed should be substantiated by competent evidence as follows:

(*a*) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(*b*) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(*c*) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(*d*) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. *Authority*: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. *Principal Purpose*: The information requested is to be used in evaluating claims.

C. *Routine Use*: See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. *Effect of Failure to Respond*: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

PAPERWORK REDUCTION ACT NOTICE

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[SEAL] DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P.O. BOX 60267
NEW ORLEANS, LOUISIANA 70160-0267

OFFICIAL BUSINESS
CEMVN-OC

REPLY TO
ATTENTION OF

19 July 2007

Office of Counsel

JAMES M GARNER
909 POYDRAS ST 28TH FL
NEW ORLEANS LA 70112-4000

SUBJECT: Claim of DOROTHY REESE, Claim Number (07N15T0256937)

Dear Sir or Madam:

The subject claim was received on 27 February 2007. A copy of the claim, with the date-stamp from this office reflecting the date of receipt, is attached. ***If the claim is properly presented within the prescribed statutory time limits***, it will be processed under the Federal Tort Claims Act (FTCA), Title 28, United States Code, Sections 2671-2680 or the Admiralty Extension Act (AEA), Title 46, United States Code app., Section 30101, as appropriate.

Due to the massive volume of claims filed in relation to Hurricane Katrina, ***the Army has not reviewed the attached claim and has not determined if a properly presented claim has been filed***. Accordingly, please review the attached claim

to determine if it complies with the requirements necessary to present a valid FTCA or AEA claim. The following items on the Standard Form (SF) 95 (Claim for Damage, Injury or Death) claim form ***must*** be completed to properly present a claim:

1. There must be a name in Block 2 (Name, Address of claimant and claimant's personal representative, if any); and

2. Block 8 (Basis of Claim) must include a description of the nature of the alleged damage, injury or death with sufficient information to permit the Army to investigate the merits of the claim and assign it a monetary value; and

3. An exact dollar amount must be recorded in one or more Blocks of 12a-12c (Property Damage, Personal Injury and/or Wrongful Death) and in Block 12d (Total) for the specific damages; and

4. Block 13a (Signature of Claimant) must be signed by the claimant or authorized representative who has written authority to sign the claim form on the claimant's behalf.

5. Each person wanting to present a properly filed claim must individually file his/her own claim and satisfy the above noted requirements. If multiple claimants are listed on the same claim form, each claimant must separately describe the nature of the damage, injury, or death alleged and state the specific amounts of damages each claimant is demanding.

An SF 95 claim form does not have to be used. However, the foregoing information must nevertheless be provided with the claim.

If, after reviewing the attached claim, you find one or more of the above deficiencies, the CLAIM HAS NOT BEEN PROPERLY PRESENTED and you must file a new claim with the required corrections within two years of the date of the alleged damage, injury or death in order to present a properly filed claim under the FTCA. Moreover, the filing of a new claim under the AEA will not be properly filed unless the new claim is filed within 18 months of the date of the alleged damage, injury or death.

The following general information is provided concerning the FTCA and AEA:

a. The FTCA and AEA both contain a mandatory six-month period for the administrative investigation of a properly filed claim and claim settlement.

b. The FTCA permits suit to be filed six months after the claim was filed if the Army has not taken final administrative action on the claim, provided the claim has been properly filed. Title 28, United States Code, Section 2675(a). However, filing suit is not required. If suit is not filed, the statute of limitations will be tolled until the claimant is notified by the Army in writing, by certified or registered mail, of the final denial of the claim.

c. Under the AEA, suit ***must*** be filed within 2 years after the date of the alleged damage, injury or death.

If a claim has been properly filed, there is no need to submit any additional information or respond to this letter at this time. ***However, an improperly filed claim does not toll the statute of limitations under the FTCA or AEA and a new claim must be properly filed within two years under the FTCA and 18 months under the AEA from the date of the alleged damage, injury or death.***

Sincerely,

/s/ [Illegible]
Angela Jean Drinkwitz
Claims Administrator

Enclosure

CLAIM FOR DAMAGE, INJURY OR DEATH

INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.

FORM APPROVED OMB NO. 1105-0008

1. Submit To Appropriate Federal Agency:

   United States Army Corps of Engineers
   Headquarters
   441 G Street, NW
   Washington, D.C. 20314

2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, Street, City, State and Zip Code)

   Claimant:

   Dorothy Reese
   [Home Address Omitted]
   Baton Rouge, LA 70816

   Representative:

   James M. Garner, Esq.
   909 Poydras, 28th Floor
   New Orleans, LA 70112

3. TYPE OF EMPLOYMENT

   ☐ MILITARY ☒ CIVILIAN

4. DATE OF BIRTH

5. MARITAL STATUS Married

6. DATE AND DAY OF ACCIDENT

   8/29/05-9/30/05

7. TIME (A.M. OR P.M.) Unknown

8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property

involved, the place of occurrence and the cause thereof. Use additional pages if necessary.)

On or about August 29, 2005 through September 30, 2005 the home and its contents located at [Home Address Omitted], New Orleans, LA 70122, and owned by Dorothy Reese, sustained extensive water damage caused by the levee breaches along the Mississippi River Gulf Coast Outlet ("MRGO"), Gulf Intracoastal Waterway, the Seventeenth Street Canal, and the Inner Harbor Navigation Canal ("Industrial Canal"). These levee breaches were caused by the actions and/or omissions of the U.S. Army Corps of Engineers. See Judge Duval's opinion of February 2, 2007 regarding In re: Katrina Canal Breaches Consolidated Litigation, No. 05-4812m Section K(2).

9. PROPERTY DAMAGE

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code)

Dorothy Reese owns the property located at [Home Address Omitted], New Orleans, LA 70122

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.)

The home and its contents located at [Home Address Omitted], New Orleans, LA 70122, and owned by Dorothy Reese, sustained extensive water damage caused by levee breaches due to

the acts and/or omissions of the U.S. Army Corps of Engineers.

10. PERSONAL INJURY/WRONGFUL DEATH

STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM, IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT.

Mental anguish and Emotional Distress

11. WITNESSES

NAME	ADDRESS (Number, Street, City, State and Zip Code)
Dorothy Reese	[Home Address Omitted], Baton Rouge, LA 70816
Kern Reese	[Home Address Omitted], Baton Rouge, LA 70816
Dr. Robert Bea	University of California at Berkley, Department of Civil and Environmental Engineering, 212 McLaughlin, Berkley, CA 94720

12. (See Instructions on reverse.) AMOUNT OF CLAIM (in dollars)

12a. PROPERTY DAMAGE $500,000.00

12b. PERSONAL INJURY $250,000.00

12c. WRONGFUL DEATH none

12d. TOTAL (Failure to specify may cause forfeiture of your rights.) $750,000.00

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM

13a. SIGNATURE OF CLAIMANT
(See instructions on reverse side)

/s/ [Illegible]/Martha Y. Curtis

13b. Phone number of person signing form
(504) 299-2102

14. DATE OF SIGNATURE 2/23/07

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM

The claimant is liable to the United States Government for the civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729.)

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS

Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)

[Bar Code Omitted In Printing]

07N15T RECEIVED Feb. 27, 2007
0256937

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? ☒ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

    1) Homeowners' coverage policy #031089878 through Allstate Insurance Company, P.O. Box 94054, Palatine, IL 60094

16. Have you filed a claim on your insurance carrier in this instance, and if so, is it full coverage or deductible? ☒ Yes ☐ No

    Deductible

17. If deductible, state amount. Hurricane 2.00%

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts.)

    Dorothy Reese filed suit against Allstate. Her suit is still pending.

19. Do you carry public liability and property damage insurance? ☒ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

    See Number 15

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items – insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES IN A *SUM CERTAIN* FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN *TWO YEARS* AFTER THE CLAIM ACCRUES.

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item #12 of this form.

The amount claimed should be substantiated by competent evidence as follows:

(*a*) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment,

the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(*b*) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(*c*) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(*d*) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

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This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. *Authority*: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. *Principal Purpose*: The information requested is to be used in evaluating claims.

C. *Routine Use*: See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. *Effect of Failure to Respond*: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

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[SEAL] DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P.O. BOX 60267
NEW ORLEANS, LOUISIANA 70160-0267

OFFICIAL BUSINESS
CEMVN-OC

REPLY TO
ATTENTION OF

19 July 2007

Office of Counsel

JAMES M GARNER
909 POYDRAS ST 28TH FL
NEW ORLEANS LA 70112-4000

SUBJECT: Claim of DOROTHY REESE, Claim Number (07N15T0257197)

Dear Sir or Madam:

The subject claim was received on 27 February 2007. A copy of the claim, with the date-stamp from this office reflecting the date of receipt, is attached. ***If the claim is properly presented within the prescribed statutory time limits***, it will be processed under the Federal Tort Claims Act (FTCA), Title 28, United States Code, Sections 2671-2680 or the Admiralty Extension Act (AEA), Title 46, United States Code app., Section 30101, as appropriate.

Due to the massive volume of claims filed in relation to Hurricane Katrina, ***the Army has not reviewed the attached claim and has not determined if a properly presented claim has been filed***. Accordingly, please review the attached claim

to determine if it complies with the requirements necessary to present a valid FTCA or AEA claim. The following items on the Standard Form (SF) 95 (Claim for Damage, Injury or Death) claim form ***must*** be completed to properly present a claim:

1. There must be a name in Block 2 (Name, Address of claimant and claimant's personal representative, if any); and

2. Block 8 (Basis of Claim) must include a description of the nature of the alleged damage, injury or death with sufficient information to permit the Army to investigate the merits of the claim and assign it a monetary value; and

3. An exact dollar amount must be recorded in one or more Blocks of 12a-12c (Property Damage, Personal Injury and/or Wrongful Death) and in Block 12d (Total) for the specific damages; and

4. Block 13a (Signature of Claimant) must be signed by the claimant or authorized representative who has written authority to sign the claim form on the claimant's behalf.

5. Each person wanting to present a properly filed claim must individually file his/her own claim and satisfy the above noted requirements. If multiple claimants are listed on the same claim form, each claimant must separately describe the nature of the damage, injury, or death alleged and state the specific amounts of damages each claimant is demanding.

An SF 95 claim form does not have to be used. However, the foregoing information must nevertheless be provided with the claim.

If, after reviewing the attached claim, you find one or more of the above deficiencies, the CLAIM HAS NOT BEEN PROPERLY PRESENTED and you must file a new claim with the required corrections within two years of the date of the alleged damage, injury or death in order to present a properly filed claim under the FTCA. Moreover, the filing of a new claim under the AEA will not be properly filed unless the new claim is filed within 18 months of the date of the alleged damage, injury or death.

The following general information is provided concerning the FTCA and AEA:

a. The FTCA and AEA both contain a mandatory six-month period for the administrative investigation of a properly filed claim and claim settlement.

b. The FTCA permits suit to be filed six months after the claim was filed if the Army has not taken final administrative action on the claim, provided the claim has been properly filed. Title 28, United States Code, Section 2675(a). However, filing suit is not required. If suit is not filed, the statute of limitations will be tolled until the claimant is notified by the Army in writing, by certified or registered mail, of the final denial of the claim.

c. Under the AEA, suit ***must*** be filed within 2 years after the date of the alleged damage, injury or death.

If a claim has been properly filed, there is no need to submit any additional information or respond to this letter at this time. ***However, an improperly filed claim does not toll the statute of limitations under the FTCA or AEA and a new claim must be properly filed within two years under the FTCA and 18 months under the AEA from the date of the alleged damage, injury or death.***

Sincerely,

/s/ [Illegible]
Angela Jean Drinkwitz
Claims Administrator

Enclosure

31101-13, Admiralty Extension Act, 46 U.S.C. § 30101, and general maritime law of the United States.

CLAIM FOR DAMAGE, INJURY OR DEATH

INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.

FORM APPROVED OMB NO. 1105-0008

1. Submit To Appropriate Federal Agency:

   United States Army Corps of Engineers
   Headquarters
   441 G Street, NW
   Washington, D.C. 20314

2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, Street, City, State and Zip Code)

   Claimant:

   Dorothy Reese
   [Home Address Omitted]
   Baton Rouge, LA 70816

   Representative:

   James M. Garner, Esq.
   909 Poydras, 28th Floor
   New Orleans, LA 70112

3. TYPE OF EMPLOYMENT

   ☐ MILITARY ☒ CIVILIAN

4. DATE OF BIRTH

5. MARITAL STATUS Married

6. DATE AND DAY OF ACCIDENT

   8/29/05-9/30/05

7. TIME (A.M. OR P.M.) Unknown

8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary.)

On or about August 29, 2005 through September 30, 2005 the home and its contents located at [Home Address Omitted], New Orleans, LA 70122, and owned by Dorothy Reese, sustained extensive water damage caused by the levee breaches along the Mississippi River Gulf Coast Outlet ("MRGO"), Gulf Intracoastal Waterway, the Seventeenth Street Canal, and the Inner Harbor Navigation Canal ("Industrial Canal"). These levee breaches were caused by the actions and/or omissions of the U.S. Army Corps of Engineers. See Judge Duval's opinion of February 2, 2007 regarding In re: Katrina Canal Breaches Consolidated Litigation, No. 05-4812m Section K(2). Mrs. Reese's injuries and damages were caused by dredges owned or chartered by the Corps of Engineers, which operated on navigable waters.

9. PROPERTY DAMAGE

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code)

Dorothy Reese owns the property located at [Home Address Omitted], New Orleans, LA 70122

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE

LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.)

The home and its contents located at [Home Address Omitted], New Orleans, LA 70122, and owned by Dorothy Reese, sustained extensive water damage caused by levee breaches due to the acts and/or omissions of the U.S. Army Corps of Engineers.

10. PERSONAL INJURY/WRONGFUL DEATH

STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM, IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT.

Mental anguish and Emotional Distress

11. WITNESSES

NAME	ADDRESS (Number, Street, City, State and Zip Code)
Dorothy Reese	[Home Address Omitted], Baton Rouge, LA 70816
Kern Reese	[Home Address Omitted], Baton Rouge, LA 70816
Dr. Robert Bea	University of California at Berkley, Department of Civil and Environmental Engineering, 212 McLaughlin, Berkley, CA 94720

12. (See Instructions on reverse.) AMOUNT OF CLAIM (in dollars)

12a. PROPERTY DAMAGE $500,000.00

12b. PERSONAL INJURY $250,000.00

12c. WRONGFUL DEATH none

12d. TOTAL (Failure to specify may cause forfeiture of your rights.) $750,000.00

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM

13a. SIGNATURE OF CLAIMANT
(See instructions on reverse side)

/s/ [Illegible]/Martha Y. Curtis

13b. Phone number of person signing form (504) 299-2102

14. DATE OF SIGNATURE 2/23/07

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM

The claimant is liable to the United States Government for the civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729.)

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS

Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)

[Bar Code Omitted In Printing]

07N15T Feb. 27, 2007
0257197

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? ☒ Yes, if yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy Number ☐ No

    1) Homeowner's coverage policy #031089878 through Allstate Insurance Company, P.O. Box 94054, Palatine, IL 60094

16. Have you filed a claim on your insurance carrier in this instance, and if so, is it full coverage or deductible? ☒ Yes ☐ No

    Deductible

17. If deductible, state amount. Hurricane 2.00%

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take

with reference to your claim? (It is necessary that you ascertain these facts.)

Dorothy Reese filed suit against Allstate. Her suit is still pending.

19. Do you carry public liability and property damage insurance? ☒ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

See Number 15

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items – insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES IN A *SUM CERTAIN* FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE

PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN *TWO YEARS* AFTER THE CLAIM ACCRUES.

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item #12 of this form.

The amount claimed should be substantiated by competent evidence as follows:

(*a*) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(*b*) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(*c*) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(*d*) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. *Authority*: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. *Principal Purpose*: The information requested is to be used in evaluating claims.

C. *Routine Use*: See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. *Effect of Failure to Respond*: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

PAPERWORK REDUCTION ACT NOTICE

This notice is *solely* for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed,

and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, D.C. 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JUSTIN REESE	**CIVIL ACTION NO.** 07-5148
vs.	**SECTION**
UNITED STATES OF AMERICA BOARD OF COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT, BOARD OF COMMISSIONERS OF THE EAST JEFFERSON LEVEE DISTRICT, SEWERAGE AND WATER BOARD OF NEW ORLEANS, ST. PAUL FIRE & MARINE INSURANCE COMPANY, AND NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH	**JUDGE**
	MAGISTRATE SECT. K MAG. 2

****

COMPLAINT FOR DAMAGES

(Filed Aug. 29, 2007)

Justin Reese ("Plaintiff") respectfully submits his Complaint for Damages as follows:

INTRODUCTION

1.

This Complaint arises out of catastrophic failures of and deficiencies in the hurricane protection system surrounding the Parish of Orleans, State of Louisiana, which occurred on and after August 29, 2005. These failures and deficiencies caused and substantially contributed to the inundation of approximately 80% of the New Orleans metropolitan area, causing extensive harm and loss of life, and destroying or rendering uninhabitable approximately 160,000 residences and buildings.

2.

Plaintiff resided at the property located at 4600 Owens Boulevard on or about August 29, 2005 when the New Orleans levee system failed, particularly the 17th Street, London Avenue, and Orleans Avenue Canals. The failure of the New Orleans levee system, the horrific result of man-made acts, caused extensive damage to Plaintiff's personal possessions.

PARTIES

3.

Plaintiff is a citizen of the state of Louisiana and domiciled in the state of Louisiana. Six months ago, Plaintiff presented a claim to the United States Army Corps of Engineers (the "Corps") for damages arising out of the failure of the New Orleans levee and

floodwall system pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671, *et seq.* Six months have elapsed since the presentation of Plaintiff's claims, and the United States Army Corps of Engineers has failed to act by either accepting or rejecting Plaintiff's claims. Thus, such failure must presumably be considered a denial of Plaintiff's claims.

4.

Defendant United States of America is a sovereign government amenable to suit for civil liability in accordance with the federal laws and regulations as set forth herein. Defendant United States Army Corps of Engineers is a division of the United States Government under the direct jurisdiction of the Department of the Army (collectively the "Corps").

5.

Defendant Board of Commissioners for the Orleans Levee District ("OLD") is a local government entity created by Louisiana Revised Statute §38:291, amenable to suit, and domiciled in the Parish of Orleans, State of Louisiana.

6.

Defendant Sewerage and Water Board of New Orleans ("SWB") is a political subdivision of the State of Louisiana created by Louisiana Revised Statute

§33:4071 *et seq.*, amenable to suit, and domiciled in the Parish of Orleans, State of Louisiana.

7.

Defendant Board of Commissioners of the East Jefferson Levee District ("EJLD") is a political subdivision of the State of Louisiana created by Louisiana Revised Statute §38:291, amenable to suit, and domiciled in the Parish of Jefferson, State of Louisiana.

8.

Defendant St. Paul Fire and Marine Insurance Company ("St. Paul") is a foreign insurance company authorized to do and doing business within the State of Louisiana. At all times relevant hereto, St. Paul had in full force and effect a policy of liability insurance, under the terms, provisions, and conditions of which is assumed liability for the acts and/or negligence of its insured, the Board of Commissioners of the Orleans Levee District, and is therefore liable to Plaintiff, and Plaintiff asserts its claims under the Louisiana Direct Action Statute, LSA-R.S. 22:655.

9.

Defendant National Union Fire Insurance Company of Pittsburgh ("National Union") is a foreign insurance company authorized to do and doing business within the State of Louisiana. At all times

relevant hereto, National Union had in full force and effect a policy of liability insurance, under the terms, provisions, and conditions of which is assumed liability for the acts and/or negligence of its insured, the Board of Commissioners of the East Jefferson Levee District, and is therefore liable to Plaintiff, and Plaintiff asserts its claims under the Louisiana Direct Action Statute, LSA-R.S. 22:655.

10.

Plaintiff avers that this matter is timely to all Defendants and is within the applicable statute of limitations as there is a related class action proceeding pending in this Court in matter captioned *In re Katrina Canal Breaches Litigation*, No. 05-4182(K)(2) (Ref: LEVEE). As recognized by the United States Supreme Court, the "commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would not have been parties had the suit been permitted to continue as a class action." *Crown, Cork, & Seal Co., Inc. v. Parker*, 462 U.S. 345, 353-54 (1983).

JURISDICTION

11.

This Court maintains subject matter jurisdiction over this action pursuant to 28 U.S.C. §1346(b) (Defendant United States) and 28 U.S.C. §2671, *et seq.* (Federal Tort Claims Act), violations of laws of the United States, including, but not limited to, 33

U.S.C. § 1251, *et seq.* (Federal Water Pollution Control Act), 16 U.S.C. § 1451 *et seq.* (Coastal Zone Management Act), and, 33 U.S.C. §403 *et seq.* (River & Harbors Act), and, alternatively, for violation of the Constitution and Laws of the State of Louisiana as well as the Constitution and Laws of the United States.

12.

Plaintiff has presented to the Corps the written, administrative claims required by the provisions of 28 U.S.C. §2671, *et seq.* (Federal Tort Claims Act) and in all respects have complied with the provisions of this statute. As discussed *supra,* a period of at least six months has elapsed since the filing of Plaintiff's written, administrative claims.

13.

Alternatively, Plaintiff avers jurisdiction is proper pursuant to 28 U.S.C. § 1331 (federal question jurisdiction). Additionally, and in the alternative, jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1367, in as much as this Court has supplemental jurisdiction over all state law claims herein arising out of the same case or controversy.

VENUE

14.

Venue is proper in this district pursuant to 28 U.S.C. § 1391 because the Defendants' negligent and wrongful actions occurred in the Eastern District of Louisiana, a substantial part of the events and omissions giving rise to this action occurred in the Eastern District of Louisiana, and the property that is the subject of this action is situated within the Eastern District of Louisiana.

WAIVER OF SOVEREIGN IMMUNITY

15.

The United States of America and the Corps waived their sovereign immunity in connection with the claims asserted in this suit by the enactment of the Federal Tort Claims Act, 28 U.S.C. § 2671 ("FTCA").

16.

Any immunity sought by the Corps pursuant to 33 U.S.C. §702(c) is not available to the extent the provisions of this Act do not apply, have not been complied with, and/or the liability of the Corps is not predicated on flood control activity. The activities undertaken by the Corps in connection with this litigation are not activities forming part of a federal flood control project, nor are the Corps's activities in connection with an authorized federal control

project. Accordingly, the provision of the Flood Control Act of 1928, 33 U.S.C. §702(c), is not applicable as a basis for governmental immunity.

FACTUAL BACKGROUND REGARDING THE 17TH STREET CANAL

A. The History of the 17th Street Canal

17.

The canal known today as the "17th Street Canal" forms a significant portion of the boundary between Orleans Parish, Louisiana and Jefferson Parish, Louisiana. Historically, the 17th Street Canal has also been known as the "Metairie Outlet Canal," the "Metairie Outfall Canal," the "Metairie Relief Canal," and the "Upperline Canal."

18.

The 17th Street Canal originated at the start of the 1850's as a canal dug through swampy ground to provide a right-of-way. It was located where the Jefferson and Lake Ponchatrain [sic] Railway was built, a railway connecting the town once called Carrollton with a shipping port on Lake Ponchatrain [sic] in the area today know as Bucktown.

19.

In 1858, a secondary canal was built, connecting the original canal to the river side of the Metairie Ridge, This spur canal was situated alongside a

projected street numbered "17th Street," and thus, the canal became known as the "17th Street Canal." The term "17th Street Canal" eventually referred to the original, larger canal to which this spur canal connected.

20.

The community of Bucktown, where the northern end of the 17th Street Canal enters Lake Ponchatrain [sic], was founded more than one hundred years ago as a group of fishing and hunting camps along the canal and Lake Ponchatrain [sic]. The earliest structures were wooden huts raised on stilts, and the canal served as a harbor and a mode of transportation for fishing boats.

21.

More substantial development in this area occurred during the mid-19th century with the construction of a commercial wharf and a resort called "Lakeport." Steamboats docked at the entrance to the New Basin Canal (now Ponchatrain [sic] Boulevard) and at the terminus of the Jefferson and Lake Ponchatrain [sic] Railway (presently Bucktown).

22.

The SWB took over the operation of the 17th Street Canal at the end of the 19th century. The canal was re-dredged in 1897, and again in 1929. In 1913,

the SWB completed the construction of Pumping Station No. 6, which drained a large portion of New Orleans through the canal. Until recent years, the 17th Street Canal was home to a fleet of approximately one hundred shrimp boats. The fleet previously had a lease agreement with the defendant SWB.

23.

The 17th Street Canal historically is, and at all times pertinent herein has been, a navigable waterway in New Orleans that flows into Lake Ponchatrain [sic].

B. The 17th Street Canal Dredging Project

24.

On July 15, 1974, the SWB initiated a project to improve drainage through the 17th Street Canal. Initially, this project called for the dredging of 2.4 miles of the canal from Pump Station No. 6 to Lake Ponchatrain [sic] to remove sediment from the canal bottom and to reshape the canal cross-section for the improvement of flow and the pump capacity of Pump Station No. 6. The removal of approximately 85,000 cubic yards of bottom sediment was anticipated.

25.

Because dredging projects in navigable waters of the United States require a Department of the Army

permit pursuant to the River & Harbors Act, the SWB filed an application with the Corps for a "Permit to Discharge or Work in Navigable Waters and their Tributaries." The Operations Division of the Corps is responsible for the issuance of permits to dredge navigable waterways. Hence, the issuance of the dredging permit for the 17th Street Canal was the province of the Corps' Operating Division, and not, for example, the Corps' Engineering Division, which is responsible for flood control.

26.

The permit approval process required the SWB to also obtain approval from, among others, the Louisiana Department of Public Works. In August of 1974, the Louisiana Department of Public Works responded to the 17th Street Canal dredge permit application by stating it could not complete a review of the application because the applicant (SWB) ***had no soil data substantiating the stability or integrity of the canal's levees***.

27.

On May 23, 1977, the Corps returned the dredging application with no action because the SWB had failed to furnish information requested by, among others, the Louisiana Department of Public Works.

28.

In 1978, the SWB retained a civil engineering firm, Modjeski and Masters, Inc. ("M&M") to provide a plan for the design and implementation of the dredging project. On August 23, 1979, M&M submitted a second dredging permit application on behalf of the SWB. On December 29, 1980, M&M re-submitted the dredging permit application after environmental concerns were raised relative to the disposal of the dredged material in Lake Ponchatrain [sic] and on the banks of the canal.

29.

On January 28, 1981, M&M, in response to inquiries about the impact of the dredging on existing levees, issued the Corps with a memorandum addressing the stability of the existing levees and sheet pile wall along the canal. M&M's memorandum indicated that at three of the six test locations, the factors of safety ***fell below the required values set by the Corps***. The handwritten report specifically stated that "***two locations yielded low factors of safety due to . . . the existence of very soft clays***."

30.

On March 5, 1981, the Corps issued an internal memorandum addressing the soil stability analyses provided by M&M which acknowledged that, in connection with the proposed dredging of the canal, safety factors were substantially below the minimum

1.30 factor of safety, requiring that the project be redesigned. The specific location of the canal's levee system to which this internal memorandum referred coincides with the area where the 17th Street Canal breached during Hurricane Katrina.

31.

On March 31, 1981, the Corps held a public hearing regarding the 17th Street Canal dredging permit application. Discussions took place regarding whether raising the existing sheet pile wall along the canal, as opposed to dredging to deepen the canal, would provide a greater cross-section and greater pump capacity. The consulting engineer representing M&M voiced his concerns about widening the canals and stated that ***not only were the levees already in violation of the Corps's engineering standards for levee stability, but that dredging attempts to remove material adjacent to the levees would only worsen the stability problem***.

32.

On April 20, 1981, in response to concerns that the proposed dredging of the 17th Street Canal would negatively impact the existing canal levee, M&M announced a preliminary plan to install sheet pile walls with concrete caps prior to any dredging or excavation. The sheet pile walls were to be of a sufficient height to meet all applicable flood protection criteria. An internal Corps memorandum dated June

16, 1981, based on a review of this proposal by M&M, acknowledged that a number of levee and flood wall stability problems were likely to occur should the SWB dredging be granted.

33.

An internal memorandum from the Corps' Engineering Division to the Corps' Operations Division, dated February 12, 1982, noted the existence of a stability problem in the 17th Street Canal at a location where excavation would directly tap the sands underlying the levee. The memorandum suggested that a stability analysis be performed for the land side of the canal, incorporating effects of seepage to determine what corrective action might be needed. Sands underlay the entire 2.4 miles of the 17th Street Canal, from Pumping Station No. 6 to Lake Ponchatrain [sic], and the stability problem recognized in this memorandum, therefore, cannot be confined to any one section of the canal.

34.

On August 23, 1982, Eustis Engineering Company ("Eustis") provided M&M with a more comprehensive subsoil investigation report, which in pertinent part recognized that measures "should be taken" because of "the possibility of a blow-out during extreme high water in the canal." The report also identified "preventive measures," including, "the installation of a seepage cutoff through the levee crown, installation of

pressure relief wells near the land side toe of the levee, and sealing the canal bottom." Eustis's recommendations were restricted to only specific areas of the canal, however, and not to the entire canal levee system. On November 30, 1982, M&M furnished the Corps with copies of Eustis's soil investigation report.

35.

In February 22, 1983, the Chief of the Corps' Engineering Division advised the SWB that the Corps believed "the installation of relief wells would be an appropriate way to provide the necessary assurance against uplift" of the 17th Street Canal's sheet piles.

36.

On May 9, 1983, M&M submitted on behalf of the SWB a new permit application for the 17th Street Drainage Canal Improvement Project. This application was to supersede the application for Phase I, submitted on December 29, 1980, and Phase II, submitted on April 20, 1981, by combining the two phases into one project with the project limits being Pump Station No. 6 on the south and 370.0 feet north of the Bucktown Pedestrian Bridge. The project now envisioned the ***removal of 470,000 cubic yards*** of canal bottom whereas the original plan called for the removal of 85,000 cubic yards.

37.

On July 27, 1983, Eustis submitted a revised soil stability report, which both confirmed the potential for a blow-out at the land side toe of the levee and extended the area of concern to the pumping station. In this report, Eustis recommended dredging a test section in the 17th Street Canal to study the hydrostatic uplift pressure.

38.

From November 29 to December 16, 1983, a test section was dug just south of Interstate 10. Six piezometers were installed on the Jefferson Parish side of the 17th Street Canal to closely monitor changes in the hydrostatic pressures before, during, and after completion of the excavation. Eustis submitted a report on the test dredging to the Corps on January 17, 1984. The report concluded that the piezometers monitored no relevant changes upon the dredging of the test section. The report further concluded that the possibility of a blow-out during high water conditions in the canal was probably slight. However, the piezometer study of the test section did not account for the pre-existing, permeable soils of the canal, and therefore, the study's conclusions as to stability and permeability were unreliable.

39.

On June 13, 1984, the Corps issued a permit to "dredge to enlarge and maintain an area and install

and maintain flood walls and mooring structures, in the 17th Street Canal (Metairie Relief Canal) from Pumping Station No. 6 to a point about 400 feet north of the Bucktown Pedestrian Bridge . . . " The "Statement of Findings" issued with the permit stated that factors considered in issuing the permit included, *inter alia*, "navigation," both present and prospective flood heights and flood plain use, and "other public interests."

40.

The dredging project was ultimately divided into the following phases: Phase I from Pump Station No. 6 to Interstate 10; Phase II-A from Interstate 10 to Hammond Highway – Orleans side; Phase II-B from Interstate 10 to Hammond Highway – Jefferson side; and Phase III from Hammond Highway to Lake Ponchatrain [sic].

41.

Phase I was completed June 1, 1984. However, because the SWB and the OLD could not reach an agreement with EJLD regarding Phase II of the Project, an extension of the permit work was granted by the Corps on February 20, 1987.

42.

On April 24, 1987, the Corps created a drawing with a sheet pile design that indicated that the sheet

pile tips were located 16 feet lower than the bottom of the 17th Street Canal. Even as the Operations Division of the Corps was addressing the SWB permit, therefore, the defendant's Engineering Division was addressing levee wall design that might incorporate the sheet piles that were permitted under the dredging project.

43.

On August 11, 1988, the SWB issued the work order for Phase III of the dredging project, and the job was completed on December 6, 1989. The work order for Phase II-A of the dredging project, which included the installation of the sheet piles on the Orleans side of the canal, was issued on July 4, 1990, and the job was completed on January 10, 1992 by Boh Bros. Construction Co., Inc.

44.

The dredging activity conducted in the 17th Street Canal pursuant to the SWB permit was specified contractually to entail "bucket dredging" from a series of flex-float barges in the canal. The barges constituted vessels in navigation for the time period during which the dredging occurred.

C. The Construction of 17th Street Canal Concrete Monoliths

45.

Without any Congressional authorization or re-authorization, the Corps unilaterally deviated from a Congressionally-authorized "Barrier Plan," which called for the installation of floodgates at the mouth of the 17th Street Canal (at Lake Ponchatrain [sic]). Defendants SWB and OLD objected to the installation of these floodgates. The Corps thereafter proposed a "Parallel Protection Plan" for the 17th Street Canal, which called for increasing the height of the flood barriers on the east and west banks of the canal. This was part of an overall "High Level Plan," which replaced the "Barrier Plan" even though this change was not authorized by Congress.

46.

In connection with the "High Level Plan," the Corps considered three options – levees, T-walls, and I-walls. The Corps rejected the use of levees and T-walls because such construction was purportedly not economically justified. Instead, under the auspices of the Corps acting in connection with the OLD, the 17th Street Canal's flood walls were constructed with an "I-wall" design which called for the construction of a concrete monolith on top of the existing sheet pile (in place from the dredging project).

47.

The U.S. Army Corps of Engineers Manual on Engineering, Design and Construction of Levees, dated April 30, 2000, states that for stability reasons, flood walls utilizing the "I-wall" design rarely exceed seven (7) feet above ground surface, and that an inverted "T-wall" design is used when walls higher than seven feet are required. ***Nonetheless the I-walls on the 17th Street Canal were built in concrete sections that rise eleven (11) feet about*** [sic] ***the ground.***

48.

Further, upon information and belief, Eustis performed a soil analysis in 1981, which entailed borings along the 17th Street Canal's levee. The borings revealed alternating layers of soft clay and black humus or peat – a soft, spongy soil comprised of decaying trees and other organic material – located fifteen to twenty-one feet below sea level. This layer of humus and peat substantially reduced the strength of the soil, particularly its strength in resisting lateral pressure and its ability to support the levee and flood walls under pressure from flood water.

49.

However, despite Eustis's findings regarding the weak soil, the Corps elected to build the walls of the 17th Street Canal with steel sheet piling driven to a depth that was seventeen (17) feet below sea level –

either above or in the middle of the layers of weak soil. To make matters worse, the soil adjacent to the 17th Street Canal levee subsided significantly after construction of the levee and flood wall, greatly reducing the amount of support that the land behind the levee provided against the pressure of flood waters.

50.

Then, in 1993, C.R. Pittman Construction Company, Inc. ("Pittman") was retained for the construction of the concrete monoliths atop the steel sheet pile wall along the 17th Street Canal. Pittman reported to the Corps that it was encountering major problems – specifically, the sheet pile walls and concrete monoliths were beginning to lean towards the canal side as the soil foundation was not of sufficient strength, rigidity and stability. Despite these concerns and problems, however, the Corps allowed the construction of the I-walls to continue, and Pittman built the concrete monoliths on top of the sheet pile driven into the unstable soil.

51.

Altogether, Defendants either failed to account for the soil and flood wall stability problems associated with the 17th Street Canal or proceeded with the engineering, design, and construction of the 17th Street Canal despite such problems. As the result of Defendants' combined negligence, the 17th Street

Canal failed during Hurricane Katrina, flooding the surrounding area and causing extensive damage to Plaintiff's personal possessions.

FACTUAL BACKGROUND REGARDING THE LONDON AVENUE CANAL

52.

The London Avenue Canal was constructed in the first half of the 19th century through an area that was mostly swampland and later became part of the City of New Orleans. The canal originally served a dual purpose of commerce and drainage, *i.e.*, it both permitted small boat traffic from Lake Ponchatrain [sic] to a section of New Orleans and provided for swamp drainage.

53.

The London Avenue Canal historically is, and at all times pertinent herein has been, a navigable waterway within the meaning of the general maritime law.

54.

The Corps, in coordination with the OLD and SWB, was responsible for the design and construction of the London Avenue Canal's levee system.

55.

A major project to upgrade the flood walls and bridges along the London Avenue Canal began in the early 1980's. The Corps had previously proposed placing a floodgate at the hurricane levees where the London Avenue Canal entered Lake Ponchatrain [sic] to provide protection from storm surge. The OLD and SWB, however, objected to this plan and instead favored building and raising the height of the parallel flood walls and levee structures along each side of the canal (the aforementioned "Parallel Protection Plan"). By 1991, the Corps, OLD and SWB had decided to proceed with this latter plan.

56.

The resulting flood walls along the London Avenue Canal were constructed atop earthen levees with an "I-wall" design consisting of steel sheet pilings driven into the compacted dirt atop the levee with reinforcing steel rods threaded through the top of the piling. Concrete was poured to encapsulate the top of the pilings and form the wall. The wall is composed of individual concrete slab sections (monoliths) that are linked together by rubbery gaskets (water stops) intended to prevent water from flowing between the monoliths and to allow the concrete to expand and contract.

57.

The entirety of the London Avenue Canal is constructed over beach sands of the Pine Island trend. The sands are located approximately 13 to 15 feet below the crowns of the I-wall levees of the canal, but are deeper at the vicinity where the northern breach occurred during Hurricane Katrina (station 113 to 118). The sand is covered with a veneer of peaty swamp deposits.

58.

Two key considerations in constructing an I-wall atop an earthen levee are 1) the composition of the soil into which the sheet piles will be driven and upon which the I-walls will rest and 2) the depth of the sheet piles based on the composition of the soil.

59.

Soil borings of the levee at the site of the London Avenue Canal south breach, which contributed to the catastrophe giving rise to this litigation, showed a layer of sand at a depth of 10 to 15 feet below sea level. Similar to the conditions at the south breach, soil borings of the levee at the site of London Avenue Canal north breach showed a layer of sand at a depth of 12 feet below sea level, as well as a layer of peat – a highly porous material that shrinks when dry and expands when wet, creating highly unstable soil conditions. Despite this layer of unstable sand, the

sheet piles supporting the flood wall monoliths of the London Avenue Canal were driven to a depth of 14 feet below sea level. ***Thus, the bottom of the sheet piles fell within a layer of sand.***

60.

As discussed *supra,* the flood walls along the London Avenue Canal are constructed with an "I-wall" design. The U.S. Army Corps of Engineers Manual on Engineering, Design and Construction of Levees dated April 30, 2000 states that, for stability reasons, flood walls utilizing the "I-wall" design rarely exceed seven (7) feet above ground surface and that an inverted "T-wall" design is used when walls higher than seven feet are required. ***Nonetheless the flood walls at the breach sites of the London Avenue Canal, although built with an "I-wall" design, have concrete sections that rise to eleven (11) feet above ground surface.***

61.

Altogether, Defendants either failed to account for the soil and flood wall stability problems associated with the London Avenue Canal or proceeded with the engineering, design, and construction of the London Avenue Canal despite such problems. As the result of Defendants' combined negligence, the London Avenue Canal failed during Hurricane Katrina, flooding the surrounding area and causing extensive damage to Plaintiff's property.

FACTUAL BACKGROUND REGARDING THE ORLEANS AVENUE CANAL

62.

The Orleans Avenue Canal is a drainage canal located in Orleans Parish and is connected on its north end to Lake Pontchartrain and on its south end with the SWB's Pumping Station No. 7.

63.

The levee and floodwall protection system along the Orleans Canal was incomplete at the time Hurricane Katrina struck the New Orleans area. Specifically, the embankment fronting the pump station, which is about four hundred feet long, is six feet lower than the floodwalls along the canal. That is, the floodwalls in this area are simply missing. The levee and floodwall protection system designed and constructed by Defendants was incomplete and did not provide adequate flood protection for the surrounding area, causing extensive water damage to Plaintiff's property.

FACTUAL BACKGROUND REGARDING HURRICANE KATRINA AND THE FAILURE OF THE 17TH STREET, LONDON AVENUE, AND ORLEANS AVENUE CANALS

64.

Hurricane Katrina made landfall at 6:10 a.m. near Buras, Louisiana, on the morning of Monday,

August 29, 2005 with estimated maximum winds of 117 mph.

65.

On August 29, 2005, a major breach of 17th Street Canal occurred on the Orleans Parish side of the canal between 9:00 a.m. and 9:15 a.m. The breach rapidly scoured to depths below mean sea level, allowing lake and canal water to flow through the Orleans Parish bank of the canal well after the storm surge had subsided.

66.

The flooding as a result of the breach of the 17th Street Canal was totally catastrophic, and caused extensive damage to Plaintiff's property located at [Home Address Omitted].

67.

Upon information and belief, water began to enter the Gentilly area east of the London Avenue Canal between 7:00 and 8:00 a.m. on August 29, 2005, pouring through a 200-foot wide breach in the levee/flood wall on the east side of the London Avenue Canal, just north of the Mirabeau Avenue bridge. This breach is referred to as the "south breach" of the London Avenue Canal levee.

68.

The water from the south breach of the London Avenue Canal initially inundated the Gentilly area of New Orleans, an area bounded on the west by the London Avenue Canal, on the south by Gentilly Boulevard (the Metairie/Gentilly Ridge), on the east by the Inner Harbor Navigational Canal (the Industrial Canal) and on the north by Lake Ponchatrain [sic]. This water eventually combined with flood waters from other levee breaches inundating other parts of New Orleans, including Plaintiff's property located at [Home Address Omitted].

69.

Upon information and belief, water began to enter the Gentilly area west of the London Avenue Canal sometime before 9:00 a.m. on August 29, 2005, pouring through a 400-foot wide breach in the levee/flood wall on the west side of the London Avenue Canal, just south of the Robert E. Lee Bridge. This is referred to as the "north breach" of the London Avenue Canal levee.

70.

The water from the north breach of the London Avenue Canal initially inundated the Gentilly area of the city bounded on the west by Bayou St. John, on the north by Lake Ponchatrain [sic], on the east by the London Avenue Canal, and along the southeastern side on a line drawn along Chef Menteur

Highway to Gentilly Boulevard to Broad Street where it intersects with Orleans Avenue and then northwest along Orleans Avenue to Bayou St. John. This water eventually combined with flood waters from other levee breaches, inundating other parts of New Orleans, including Plaintiff's property located at [Home Address Omitted].

71.

Upon information and belief, at approximately 9:00 a.m. on August 29, 2005, as a result of Defendants' inadequate design and construction of the floodwalls along the Orleans Avenue Canal, the embankment fronting the pump station at the foot of the canal was overtopped and left unprotected by missing floodwalls, causing significant water damage to the surrounding area.

72.

Notably, the storm surge associated with Hurricane Katrina did not overtop the flood walls at the sites of the 17th Street, London Avenue, and Orleans Avenue Canals. Indeed, the hurricane did not exceed the designed parameters for these canals. Thus, none of the flood wall breaches in question would have occurred as a result of Hurricane Katrina alone. Rather, these breaches occurred solely as a result of Defendants' faulty and negligent engineering, design, construction, and maintenance of the 17th Street, London Avenue, and Orleans Avenue Canals.

FACTUAL BACKGROUND REGARDING THE "LAKE PONTCHARTRAIN, LOUISIANA AND VICINITY, HURRICANE PROTECTION PROJECT"

73.

The majority of the levee and/or I-wall structures surrounding the New Orleans metropolitan area were constructed, in part, under the authority of the "Lake Pontchartrain, Louisiana and Vicinity, Hurricane Protection Project" ("Lake Pontchartrain Project"). Congress first authorized the implementation of the Lake Pontchartrain Project in the Flood Control Act of 1965 to provide hurricane protection to the areas surrounding Lake Pontchartrain. The Corps was primarily responsible for the project's design and construction.

74.

The Corps based its design and construction of the Lake Pontchartrain Project on the 1959 Standard Project Hurricane, which the Corps knew to be obsolete by 1972 when the construction of the Lake Pontchartrain Project actually began. As a result, the Corps designed and constructed the levees and floodwalls associated with the Lake Pontchartrain Project (including the 17th Street, London Avenue, and Orleans Avenue Canals) based on outdated specifications, leaving the hurricane protection system deficient and subjecting the New Orleans area to an increased threat of flooding.

75.

Additionally, as discussed *supra*, the Corps rejected the Congressionally-authorized Barrier Plan that called for a series of levees and other flood control structures, including barriers and flood control gates, to prevent storm surges from entering Lake Pontchartrain in the event of a hurricane. The Barrier Plan was purposefully selected by Congress over another alternative, the High-Level Plan, which would have excluded the barriers and flood control gates called for by the Barrier Plan and replaced them with higher levees and flood protection structures along the lakefront and other areas. Congress rejected the High-Level Plan because it was seriously flawed in many respects, including, but not limited to, prolonged construction time, displacement of residences, less efficient floodwalls, a hampered interior drainage system, less protection to the Northshore, and increased cost.

76.

Despite Congress's approval of the Barrier Plan and rejection of the High-Level Plan, Defendants elected to implement the High-Level Plan without obtaining the required authorization from Congress and knowing of the High-Level Plan's deficiencies.

77.

By the mid 1980s, as more residences were built along the canals, the Corps proposed to provide

greater protection from storm surge by implementing a parallel protection plan that called for raising the height of the existing levees and sheet pile floodwalls along each side of the canals. As discussed *supra*, when implementing this parallel protection plan, Defendants elected to use I-walls rather than T-walls which would have provided a higher level of stability and reliability, especially in soft soil conditions. Construction of the I-walls along the 17th Street, London Avenue and Orleans Avenue Canals was completed by the end of the 1990s.

78.

On or about August 29, 2005, the I-walls designed and constructed by Defendants along the 17th Street and London Avenue Canals failed catastrophically due to Defendants' unauthorized, negligent, wanton and/or reckless, and unilateral decision to abandon the Congressionally-authorized Barrier Plan and implement the flawed parallel protection plan utilizing the I-wall design.

FACTUAL BACKGROUND REGARDING THE IPET REPORT

79.

The Corps has conceded that the failure of the New Orleans levee system, including the failure of the 17th Street, London Avenue, and Orleans Avenue Canals, was caused by the inadequate design, planning, and construction of the system's levees and

floodwalls. Following Hurricane Katrina, the Corps undertook a massive investigation of the reason for the levee and flood wall failures. This investigation was coordinated by the Interagency Performance Evaluation Taskforce ("IPET"). On March 26, 2007, IPET issued its Interim Final and Final Reports concerning the Performance Evaluation of the New Orleans and Southeast Louisiana Hurricane Protection System ("IPET Report").

80.

IPET was created by the Chief of Engineers, U.S. Army Corps of Engineers to evaluate the New Orleans hurricane protection system in light of Hurricane Katrina. IPET consisted of government, academic, and private sector scientists and engineers with extensive experience in the field of civil engineering. The report was consistently peer reviewed prior to publication.

81.

The IPET Report provides extensive background regarding the construction of the hurricane protection system and reveals that, almost from the start, construction was based on inaccurate assumptions and calculations. IPET found that deficiencies existed throughout the levee system, which was constructed at an elevation below design specifications.

82.

Overall, IPET summed up its analysis of the hurricane protection system with the concession that its performance was compromised by the incompleteness of the system, the inconsistency in levels of protection, and the lack of redundancy. Volume I of the IPET Report made the following overall conclusions regarding the failure of the levees:

- Flood control structures in the region were authorized and designed relative to a water level datum (mean sea level), but constructed relative to a geodectic vertical datum ***incorrectly assumed to be equivalent to the water level datum. This resulted, in the case of the outfall canals, in structures built approximately 1 to 2 ft below the intended elevation***.

- Sections of the system were built below specified design elevations due to the ***use of an inaccurate relationship between the geodectic datum and mean sea level datum***.

- Coupled with the ***use of average values*** obtained from widely spaced samples in a geology with highly variable conditions, the structure was left ***with a marginal factor of safety***.

- The structures were constructed on weak and compressible soils.

- The hurricane protection in New Orleans was designed and developed in a piecemeal fashion, resulting in inconsistent levels of protection.

- ***Four breaches***, all in the outfall canals and all involving I-walls, ***occurred before water levels reached the top of the floodwalls. All were caused by foundation failures*** induced by the formation of a gap along the canal side of the floodwall. . . . ***This failure mechanism***, in particular the gap formation, ***was not considered in the original design of the structures***.

- The maintained condition of the levees was an additional negative factor in the performance of the system.

DAMAGES SUSTAINED BY PLAINTIFF

83.

Plaintiff avers that, to date, he has sustained total damages in the amount of $125,000.00, as a direct and proximate result of the negligence and/or fault of the Defendants herein. Plaintiff further avers that he continues to sustain damages as a direct and proximate result of the negligence and/or fault of the Defendants herein.

COUNT I:

NEGLIGENCE OF DEFENDANTS IN THE DREDGING OF THE 17TH STREET CANAL

84.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as though fully set forth herein.

85.

The Corps, OLD, EJLD, and SWB, had the legal responsibility and duty to Plaintiff to cause, allow, and/or conduct the dredging of the 17th Street Canal in a manner that would not compromise the safety of the canal's levee/flood wall system. As discussed *supra*, the Corps, OLD, ELD [sic], and SWB ignored federal regulations and engineering standards and entirely disregarded overwhelming evidence that the dredging of the 17th Street Canal would dangerously compromise the canal's flood protection levee.

86.

As a result of the negligence of the Corps, OLD, ELD [sic], and SWB, the dredging of the 17th Street Canal worsened the stability of the canal's levee and flood walls and eventually contributed to the failure of the canal during Hurricane Katrina, causing extensive damage to Plaintiff. Defendants St. Paul and National Union, as the insurers of OLD and EJLD, are directly liable to Plaintiff for her damages.

87.

As a direct and proximate result of the negligence of the Corps, OLD, ELD [sic], and SWB in the dredging of the 17th Street Canal, Plaintiff suffered extensive damage, including, but not limited to, loss of personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial.

COUNT II:

NEGLIGENCE OF DEFENDANTS IN THE DESIGN, CONSTRUCTION AND MAINTENANCE OF THE 17TH STREET CANAL LEVEES AND FLOOD WALLS

88.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as through [sic] fully set forth herein.

89.

The Corps, OLD, ELD [sic], and SWB had a legal responsibility and duty to Plaintiff to cause, allow, and/or conduct the design and construction of the levees and flood walls of the 17th Street Canal in a manner that would not compromise the safety of the canal's levee/flood wall system. As discussed *supra*, the Corps, ELD [sic], and SWB knew or should have known of the deficiencies in the design and construction of the 17th Street Canal, particularly given the

nature of the soil in the area and the height and instability of the I-walls.

90.

The Corps, OLD, ELD [sic], and SWB negligently abandoned a Congressionally-authorized plan to install floodgates at the 17th Street Canal which would have lessened the storm surge form [sic] Hurricane Katrina, opting instead to use a "parallel" plan pursuant to which the 17th Street Canal levee and flood wall system was inadequately designed and built.

91.

The Corps, OLD, ELD [sic], and SWB negligently ignored multiple reports regarding the weak and unstable sand and soil below the 17th Street Canal and negligently designed and constructed the 17th Street Canal with I-walls built at 11 feet above ground, despite engineering guidelines discouraging the use of I-walls at heights greater than 7 feet above ground.

92.

The Corps, OLD, ELD [sic], and SWB negligently failed to properly maintain and inspect the 17th Street Canal levee/flood wall system which would have led to the correction of or exposure of its deficiencies such that the failure of the system could have been prevented.

93.

As a result of the negligence of the Corps, OLD, ELD [sic], and SWB, the design and construction of the 17th Street Canal worsened the stability of the canal's levee and flood walls and eventually contributed to the failure of the canal during Hurricane Katrina, causing extensive damage to Plaintiff. Defendants St. Paul and National Union, as the insurers of OLD and EJLD, are directly liable to Plaintiff for its damages.

94.

As a direct and proximate result of the negligence of the Corps, OLD, ELD [sic], and SWB in the design, construction, and maintenance of the 17th Street Canal, Plaintiff suffered extensive damage, including, but not limited to, loss of loss of personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial.

COUNT III:

NEGLIGENCE OF DEFENDANTS IN THE DESIGN, CONSTRUCTION AND MAINTENANCE OF THE LONDON AVENUE CANAL LEVEES AND FLOODWALLS

95.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as through [sic] fully set forth herein.

96.

The Corps, OLD, ELD [sic], and SWB had a legal responsibility and duty to Plaintiff to cause, allow, and/or conduct the design and construction of the levees and flood walls of the London Avenue Canal in a manner that would not compromise the safety of the canal's levee/flood wall system. As discussed *supra*, the Corps, OLD, ELD [sic], and SWB knew or should have known of the deficiencies in the design and construction of the London Avenue Canal, particularly given the nature of the sand and soil in the area and the height and instability of the I-walls.

97.

The Corps, OLD, ELD [sic], and SWB negligently abandoned a Congressionally-authorized plan to install floodgates at the London Avenue Canal which would have lessened the storm surge form Hurricane Katrina, opting instead to use a "parallel" plan pursuant to which the London Avenue Canal levee and flood wall system was inadequately designed and built.

98.

The Corps, OLD, ELD [sic], and SWB negligently entirely ignored multiple reports regarding the weak and unstable sand and soil below the London Avenue Canal and negligently designed and constructed the London Avenue Canal with I-walls built at 11 feet above ground, despite engineering guidelines discouraging

the use of I-walls at heights greater than 7 feet above ground.

99.

The Corps, OLD, ELD [sic], and SWB negligently failed to properly maintain and inspect the London Avenue Canal levee/flood wall system which would have led to the correction of or exposure of its deficiencies such that the failure of the system could have been prevented.

100.

As a result of the negligence of the Corps, OLD, ELD [sic], and SWB, the design and construction of the London Avenue Canal worsened the stability of the canal's levee and flood walls and eventually contributed to the failure of the canal during Hurricane Katrina, causing extensive damage to Plaintiff. Defendants St. Paul and National Union, as the insurers of OLD and EJLD, are directly liable to Plaintiff for her damages.

101.

As a direct and proximate result of negligence of the Corps, OLD, ELD [sic], and SWB in the design, construction, and maintenance of the London Avenue Canal, Plaintiff suffered extensive damage, including, but not limited to, loss of personal property, evacuation expenses, mental anguish, emotional distress,

attorneys' fees, and other special damages to be proven at trial.

COUNT IV:

NEGLIGENCE OF DEFENDANTS IN THE DESIGN, CONSTRUCTION AND MAINTENANCE OF THE ORLEANS AVENUE CANAL LEVEES AND FLOODWALLS

102.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as through [sic] fully set forth herein.

103.

The Corps, OLD, ELD [sic], and SWB had a legal responsibility and duty to Plaintiff to cause, allow, and/or conduct the design and construction of the levees and flood walls of the Orleans Avenue Canal in a manner that would not compromise the safety of the canal's levee/flood wall system. As discussed *supra*, the Corps, OLD, ELD [sic], and SWB knew or should have known of the deficiencies in the design and construction of the Orleans Avenue Canal, particularly given the embankment fronting the pump station at the foot of the canal that was left unprotected by missing floodwalls.

104.

As a result of the negligence of the Corps, OLD, ELD [sic], and SWB, the design and construction of the Orleans Avenue Canal failed to provide adequate flood protection to the surrounding area, causing extensive damage to Plaintiff. Defendants St. Paul and National Union, as the insurers of OLD and EJLD, are directly liable to Plaintiff for his damages.

105.

As a direct and proximate result of the negligence of the Corps, OLD, ELD [sic], and SWB in the design, construction, and maintenance of the London Avenue Canal, Plaintiff suffered extensive damage, including, but not limited to, loss of personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial.

COUNT IV:

DEFENDANTS' NEGLIGENCE IN IMPLEMENTING THE "LAKE PONTCHARTRAIN, LOUISIANA AND VICINITY, HURRICANE PROTECTION PROJECT"

106.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as through [sic] fully set forth herein.

107.

The Corps, OLD, ELD [sic], and SWB had a legal responsibility and duty to Plaintiff to cause, allow, and/or conduct the implementation of the Lake Pontchartrain Project in a manner that would not compromise the safety of the hurricane protection system. As discussed *supra*, the Corps, OLD, ELD [sic], and SWB knew or should have known of the deficiencies in the implementation of the Lake Pontchartrain Project as the Corps, OLD, ELD [sic], and SWB purposefully rejected the Congressionally-authorized Barrier Plan and instead implemented a parallel protection plan utilizing a flawed I-wall design.

108.

As a result of the negligence of the Corps, OLD, ELD [sic], and SWB, the 17th Street and London Avenue Canals failed catastrophically, causing Plaintiff to suffer extensive damage, including, but not limited to, loss of property (both immovable and movable), loss of personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial. Defendants St. Paul and National Union, as the insurers of OLD and EJLD, are directly liable to Plaintiff for her damages.

COUNT V:

STRICT LIABILITY

109.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as through [sic] fully set forth herein.

110.

The Corps, OLD, ELD [sic], and SWB had, at all relevant times, the care, custody and control, and thus the *garde* of the 17th Street, London Avenue, and Orleans Avenue Canals and the levees/floodwalls adjacent thereto. As such they are strictly liable to Plaintiff for his damages resulting from the vices and/or defects within these canals and their levees/floodwalls, in accordance with Louisiana Civil Code article 2317, *et seq*.

111.

The the [sic] Corps, OLD, ELD [sic], and SWB knew, or in the exercise of reasonable care should have known, of the vices that caused Plaintiff's damages. Defendants St. Paul and National Union, as the insurers of OLD and EJLD, are directly liable for Plaintiff's injuries. Further, in the exercise of reasonable care by the Corps, OLD, ELD [sic], and SWB, Plaintiff's damages could have been prevented.

113.

Plaintiff expressly pleads the doctrine of *Res Ipsa Loquitur* against each and all of the Defendants, as may be appropriate under the circumstances and permitted by law.

COUNT VI:

NUISANCE

114.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as through [sic] fully set forth herein.

115.

As the proprietors of the 17th Street, London Avenue, and Orleans Avenue Canals, the Corps, OLD, ELD [sic], and SWB had a duty, pursuant to Louisiana Civil Code article 667, to refrain from creating a nuisance with respect to these canals. Because of the negligence of the Corps, OLD, ELD [sic], and SWB, however, Plaintiff has been deprived from the enjoyment of his property. Thus, the Corps, OLD, ELD [sic], and SWB have created a nuisance by ignoring the hazardous conditions in the 17th Street, London Avenue, and Orleans Avenue Canals. Defendants St. Paul and National Union, as the insurers of OLD and EJSD [sic], are directly liable to Plaintiff for her damages.

116.

Defendants have violated the common law doctrine of nuisance. The negligent and/or reckless actions of Defendants in creating and ignoring the hazardous conditions in the hurricane protection system have caused unique and significant harm as discussed *supra* and have deprived Plaintiff from the use and enjoyment of its property. Thus, Defendants are liable for Plaintiff's damages. As a result of Defendants' creation of a nuisance and violation of their federal common law duty, Plaintiff suffered extensive damage, including, but not limited to, loss of personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that:

(1) Defendants be held liable for all of Plaintiff's damages caused by Defendants' negligence in the dredging of the 17th Street Canal, including, but not limited to, Plaintiff's loss of personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial;

(2) Defendants be held liable for all of Plaintiff's damages caused by Defendants' negligence in the design, construction, and maintenance of the 17th Street Canal, including, but not limited to, Plaintiff's

loss of personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial;

(3) Defendants be held liable for all of Plaintiff's damages caused by Defendants' negligence in the design, construction, and maintenance of the London Avenue Canal, including, but not limited to, Plaintiff's loss of personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial;

(4) Defendants be held liable for all of Plaintiff's damages caused by Defendants' negligence in the design, construction, and maintenance of the Orleans Avenue Canal, including, but not limited to, Plaintiff's loss of personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial;

(5) Defendants be held liable for all of Plaintiff's damages caused by Defendants' negligence in the implementation of the Lake Pontchartrain Project, including, but not limited to, Plaintiff's loss of personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial;

(6) Defendants be held strictly liable for Plaintiff's damages resulting from the vices and/or defects within these canals and their levees/floodwalls, in accordance with Louisiana Civil Code article 2317, *et seq.* and the doctrine of *Res Ipsa Loquitur*;

(7) Defendants be held liable for Plaintiff's damages resulting from Defendants' creation of a nuisance in creating and ignoring the hazardous conditions of the 17th Street, London Avenue, and Orleans Avenue Canals.

(8) Defendants be held liable for all of Plaintiff's attorneys fees and costs associated with this litigation pursuant to the Federal Tort Claims Act and/or the Equal Access to Judgments Act;

(9) Defendants be held liable for all pre-judgment and post-judgment interest on all amounts awarded to Plaintiff; and

(10) Any other equitable and general relief in the nature of this case will allow.

/s/ Martha Y. Curtis
MARTHA Y. CURTIS
20446 (T.A.)
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JARED REESE	**CIVIL ACTION NO.** _____
vs.	**SECTION** 07-5150
UNITED STATES OF AMERICA BOARD OF COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT, BOARD OF COMMISSIONERS OF THE EAST JEFFERSON LEVEE DISTRICT, SEWERAGE AND WATER BOARD OF NEW ORLEANS, ST. PAUL FIRE & MARINE INSURANCE COMPANY, AND NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH	**JUDGE** _____
	MAGISTRATE SECT. K MAG. 2

****

COMPLAINT FOR DAMAGES

(Filed Aug. 29, 2007)

Jared Reese ("Plaintiff") respectfully submits his Complaint for Damages as follows:

INTRODUCTION

1.

This Complaint arises out of catastrophic failures of and deficiencies in the hurricane protection system

surrounding the Parish of Orleans, State of Louisiana, which occurred on and after August 29, 2005. These failures and deficiencies caused and substantially contributed to the inundation of approximately 80% of the New Orleans metropolitan area, causing extensive harm and loss of life, and destroying or rendering uninhabitable approximately 160,000 residences and buildings.

2.

Plaintiff resided at the property located at [Home Address Omitted] on or about August 29, 2005 when the New Orleans levee system failed, particularly the 17th Street, London Avenue, and Orleans Avenue Canals. The failure of the New Orleans levee system, the horrific result of man-made acts, caused extensive damage to Plaintiff's personal possessions.

PARTIES

3.

Plaintiff is a citizen of the state of Louisiana and domiciled in the state of Louisiana. Six months ago, Plaintiff presented a claim to the United States Army Corps of Engineers (the "Corps") for damages arising out of the failure of the New Orleans levee and floodwall system pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671, *et seq.*, the Suits in Admiralty Act, 46 U.S.C. §30901-18, the Public Vessels Act, 46 U.S.C. §46-31101-13, the Admiralty Extension Act, 46 U.S.C. §30101, and the general maritime law of the

United States. Six months have elapsed since the presentation of Plaintiff's claims, and the United States Army Corps of Engineers has failed to act by either accepting or rejecting Plaintiff's claims. Thus, such failure must presumably be considered a denial of Plaintiff's claims.

4.

Defendant United States of America is a sovereign government amenable to suit for civil liability in accordance with the federal laws and regulations as set forth herein. Defendant United States Army Corps of Engineers is a division of the United States Government under the direct jurisdiction of the Department of the Army (collectively the "Corps").

5.

Defendant Board of Commissioners for the Orleans Levee District ("OLD") is a local government entity created by Louisiana Revised Statute §38:291, amenable to suit, and domiciled in the Parish of Orleans, State of Louisiana.

6.

Defendant Sewerage and Water Board of New Orleans ("SWB") is a political subdivision of the State of Louisiana created by Louisiana Revised Statutes §33:4071 *et seq.*, amenable to suit, and domiciled in the Parish of Orleans, State of Louisiana.

7.

Defendant Board of Commissioners of the East Jefferson Levee District ("EJLD") is a political subdivision of the State of Louisiana created by Louisiana Revised Statute §38:291, amenable to suit, and domiciled in the Parish of Jefferson, State of Louisiana.

8.

Defendant St. Paul Fire and Marine Insurance Company ("St. Paul") is a foreign insurance company authorized to do and doing business within the State of Louisiana. At all times relevant hereto, St. Paul had in full force and effect a policy of liability insurance, under the terms, provisions, and conditions of which is assumed liability for the acts and/or negligence of its insured, the Board of Commissioners of the Orleans Levee District, and is therefore liable to Plaintiff, and Plaintiff asserts its claims under the Louisiana Direct Action Statute, LSA-R.S. 22:655.

9.

Defendant National Union Fire Insurance Company of Pittsburgh ("National Union") is a foreign insurance company authorized to do and doing business within the State of Louisiana. At all times relevant hereto, National Union had in full force and effect a policy of liability insurance, under the terms, provisions, and conditions of which is assumed liability for the acts and/or negligence of its insured, the

Board of Commissioners of the East Jefferson Levee District, and is therefore liable to Plaintiff, and Plaintiff asserts its claims under the Louisiana Direct Action Statute, LSA-R.S. 22:655.

10.

Plaintiff avers that this matter is timely to all Defendants and is within the applicable statute of limitations as there is a related class action proceeding pending in this Court in matter captioned *In re Katrina Canal Breaches Litigation*, No. 05-4182(K)(2) (Ref: LEVEE). As recognized by the United States Supreme Court, the "commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would not have been parties had the suit been permitted to continue as a class action." *Crown, Cork, & Seal Co., Inc. v. Parker*, 462 U.S. 345, 353-54 (1983).

JURISDICTION

11.

This Court maintains subject matter jurisdiction over this action pursuant to 28 U.S.C. §1346(b) (Defendant United States) and 28 U.S.C. §2671, *et seq.* (Federal Tort Claims Act), violations of laws of the United States, including, but not limited to, 33 U.S.C. § 1251, *et seq.* (Federal Water Pollution Control Act), 16 U.S.C. § 1451 *et seq.* (Coastal Zone Management Act), and, 33 U.S.C. §403 *et seq.* (River & Harbors Act), and, alternatively, for violation of the

Constitution and Laws of the State of Louisiana as well as the Constitution and Laws of the United States.

12.

Plaintiff has presented to the Corps the written, administrative claims required by the provisions of 28 U.S.C. §2671, *et seq.* (Federal Tort Claims Act) and in all respects have complied with the provisions of this statute. As discussed *supra*, a period of at least six months has elapsed since the filing of Plaintiff's written, administrative claims.

13.

Alternatively, Plaintiff avers jurisdiction is proper pursuant to 28 U.S.C. § 1331 (federal question jurisdiction). Additionally, and in the alternative, jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1367, in as much as this Court has supplemental jurisdiction over all state law claims herein arising out of the same case or controversy.

14.

Alternatively, Plaintiff pleads admiralty and maritime jurisdiction and causes of action under the Admiralty Extension Act, 46 U.S.C. §30101, the Suits in Admiralty Act, 46 U.S.C. § 30901-18, and/or the Public Vessels Act, 46 U.S.C. § 31101-13. Upon information and belief, one or more of the vessels

owned, operated, and/or controlled by the United States government in the construction of the levees, floodwalls, and canals at issue in this Complaint caused or contributed to Plaintiff's damages. Plaintiff has presented to the Corps the written, administrative claims required by the provisions of 46 U.S.C. §30101 (Admiralty Extension Act). A period of at least six months has elapsed since the filing of Plaintiff's written, administrative claims.

VENUE

15.

Venue is proper in this district pursuant to 28 U.S.C. § 1391 because the Defendants' negligent and wrongful actions occurred in the Eastern District of Louisiana, a substantial part of the events and omissions giving rise to this action occurred in the Eastern District of Louisiana, and the property that is the subject of this action is situated within the Eastern District of Louisiana.

WAIVER OF SOVEREIGN IMMUNITY

16.

The United States of America and the Corps waived their sovereign immunity in connection with the claims asserted in this suit by the enactment of the Federal Tort Claims Act, 28 U.S.C. § 2671 ("FTCA"). While Plaintiff believes that all of his claims against the Corps are derived from the FTCA

applying the tort and other laws of the State of Louisiana, out of an abundance of caution, Plaintiff alternatively pleads admiratly and maritime jurisdiction and causes of action under the Admiralty Extension Act, 46 U.S.C. §30101, the Suits in Admiralty Act, 46 U.S.C. § 30901-18, the Public Vessels Act, 46 U.S.C. § 31101-13, the Coastal Zone Management Act, 16 U.S.C. § 1451 *et seq.*, and the River & Harbors Act, 33 U.S.C. §403 *et seq.*

17.

Any immunity sought by the Corps pursuant to 33 U.S.C. §702(c) is not available to the extent the provisions of this Act do not apply, have not been complied with, and/or the liability of the Corps is not predicated on flood control activity. The activities undertaken by the Corps in connection with this litigation are not activities forming part of a federal flood control project, nor are the Corps's activities in connection with an authorized federal control project. Accordingly, the provision of the Flood Control Act of 1928, 33 U.S.C. §702(c), is not applicable as a basis for governmental immunity.

FACTUAL BACKGROUND REGARDING THE 17th STREET CANAL

A. The History of the 17th Street Canal

18.

The canal known today as the "17th Street Canal" forms a significant portion of the boundary between Orleans Parish, Louisiana and Jefferson Parish, Louisiana. Historically, the 17th Street Canal has also been known as the "Metairie Outlet Canal," the "Metairie Outfall Canal," the "Metairie Relief Canal," and the "Upperline Canal."

19.

The 17th Street Canal originated at the start of the 1850's as a canal dug through swampy ground to provide a right-of-way. It was located where the Jefferson and Lake Ponchatrain [sic] Railway was built, a railway connecting the town once called Carrollton with a shipping port on Lake Ponchatrain [sic] in the area today know [sic] as Bucktown.

20.

In 1858, a secondary canal was built, connecting the original canal to the river side of the Metairie Ridge. This spur canal was situated alongside a projected street numbered "17th Street," and thus, the canal became known as the "17th Street Canal." The term "17th Street Canal" eventually referred to

the original, larger canal to which this spur canal connected.

21.

The community of Bucktown, where the northern end of the 17th Street Canal enters Lake Ponchatrain [sic], was founded more than one hundred years ago as a group of fishing and hunting camps along the canal and Lake Ponchatrain [sic]. The earliest structures were wooden huts raised on stilts, and the canal served as a harbor and a mode of transportation for fishing boats.

22.

More substantial development in this area occurred during the mid-19th century with the construction of a commercial wharf and a resort called "Lakeport." Steamboats docked at the entrance to the New Basin Canal (now Ponchatrain [sic] Boulevard) and at the terminus of the Jefferson and Lake Ponchatrain [sic] Railway (presently Bucktown).

23.

The SWB took over the operation of the 17th Street Canal at the end of the 19th century. The canal was re-dredged in 1897, and again in 1929. In 1913, the SWB completed the construction of Pumping Station No. 6, which drained a large portion of New Orleans through the canal. Until recent years,

the 17th Street Canal was home to a fleet of approximately one hundred shrimp boats. The fleet previously had a lease agreement with the defendant SWB.

24.

The 17th Street Canal historically is, and at all times pertinent herein has been, a navigable waterway in New Orleans that flows into Lake Ponchatrain [sic].

B. <u>The 17th Street Canal Dredging Project</u>

25.

On July 15, 1974, the SWB initiated a project to improve drainage through the 17th Street Canal. Initially, this project called for the dredging of 2.4 miles of the canal from Pump Station No. 6 to Lake Ponchatrain [sic] to remove sediment from the canal bottom and to reshape the canal cross-section for the improvement of flow and the pump capacity of Pump Station No. 6. The removal of approximately 85,000 cubic yards of bottom sediment was anticipated.

26.

Because dredging projects in navigable waters of the United States require a Department of the Army permit pursuant to the River & Harbors Act, the SWB filed an application with the Corps for a "Permit to Discharge or Work in Navigable Waters and their

Tributaries." The Operations Division of the Corps is responsible for the issuance of permits to dredge navigable waterways. Hence, the issuance of the dredging permit for the 17th Street Canal was the province of the Corps' Operating Division, and no, for example, the Corps' Engineering Division, which is responsible for flood control.

27.

The permit approval process required the SWB to also obtain approval from, among others, the Louisiana Department of Public Works. In August of 1974, the Louisiana Department of Public Works responded to the 17th Street Canal dredge permit application by stating it could not complete a review of the application because the applicant (SWB) ***had no soil data substantiating the stability or integrity of the canal's levees***.

28.

On May 23, 1977, the Corps returned the dredging application with no action because the SWB had failed to furnish information requested by, among others, the Louisiana Department of Public Works.

29.

In 1978, the SWB retained a civil engineering firm, Modjeski and Masters, Inc. ("M&M") to provide a plan for the design and implementation of the

dredging project. On August 23, 1979, M&M submitted a second dredging permit application on behalf of the SWB. On December 29, 1980, M&M re-submitted the dredging permit application after environmental concerns were raised relative to the disposal of the dredged material in Lake Ponchatrain [sic] and on the banks of the canal.

30.

On January 28, 1981, M&M, in response to inquiries about the impact of the dredging on existing levees, issued the Corps with a memorandum addressing the stability of the existing levees and sheet pile wall along the canal. M&M's memorandum indicated that at three of the six test locations, the factors of safety ***fell below the required values set by the Corps***. The handwritten report specifically stated that "***two locations yielded low factors of safety due to . . . the existence of very soft clays***."

31.

On March 5, 1981, the Corps issued an internal memorandum addressing the soil stability analyses provided by M&M which acknowledged that, in connection with the proposed dredging of the canal, safety factors were substantially below the minimum 1.30 factor of safety, requiring that the project be redesigned. The specific location of the canal's levee system to which this internal memorandum referred

coincides with the area where the 17th Street Canal breached during Hurricane Katrina.

32.

On March 31, 1981, the Corps held a public hearing regarding the 17th Street Canal dredging permit application. Discussions took place regarding whether raising the existing sheet pile wall along the canal, as opposed to dredging to deepen the canal, would provide a greater cross-section and greater pump capacity. The consulting engineer representing M&M voiced his concerns about widening the canals and stated that ***not only were the levees already in violation of the Corps's engineering standards for levee stability, but that dredging attempts to remove material adjacent to the levees would only worsen the stability problem***.

33.

On April 20, 1981, in response to concerns that the proposed dredging of the 17th Street Canal would negatively impact the existing canal levee, M&M announced a preliminary plan to install sheet pile walls with concrete caps prior to any dredging or excavation. The sheet pile walls were to be of a sufficient height to meet all applicable flood protection criteria. An internal Corps memorandum dated June 16, 1981, based on a review of this proposal by M&M, acknowledged that a number of levee and flood wall

stability problems were likely to occur should the SWB dredging be granted.

34.

An internal memorandum from the Corps' Engineering Division to the Corps' Operations Division, dated February 12, 1982, noted the existence of a stability problem in the 17th Street Canal at a location where excavation would directly tap the sands underlying the levee. The memorandum suggested that a stability analysis be performed for the land side of the canal, incorporating effects of seepage to determine what corrective action might be needed. Sands underlay the entire 2.4 miles of the 17th Street Canal, from Pumping Station No. 6 to Lake Ponchatrain [sic], and the stability problem recognized in this memorandum, therefore, cannot be confined to any one section of the canal.

35.

On August 23, 1982, Eustis Engineering Company ("Eustis") provided M&M with a more comprehensive subsoil investigation report, which in pertinent part recognized that measures "should be taken" because of "the possibility of a blow-out during extreme high water in the canal." The report also identified "preventive measures," including, "the installation of a seepage cutoff through the levee crown, installation of pressure relief wells near the land side toe of the levee, and sealing the canal

bottom." Eustis's recommendations were restricted to only specific areas of the canal, however, and not to the entire canal levee system. On November 30, 1982, M&M furnished the Corps with copies of Eustis's soil investigation report.

36.

On February 22, 1983, the Chief of the Corps' Engineering Division advised the SWB that the Corps believed "the installation of relief wells would be an appropriate way to provide the necessary assurance against uplift" of the 17th Street Canal's sheet piles.

37.

On May 9, 1983, M&M submitted on behalf of the SWB a new permit application for the 17th Street Drainage Canal Improvement Project. This application was to supersede the application for Phase I, submitted on December 29, 1980, and Phase II, submitted on April 20, 1981, by combining the two phases into one project with the project limits being Pump Station No. 6 on the south and 370.0 feet north of the Bucktown Pedestrian Bridge. The project now envisioned the ***removal of 470,000 cubic yards*** of canal bottom whereas the original plan called for the removal of 85,000 cubic yards.

38.

On July 27, 1983, Eustis submitted a revised soil stability report, which both confirmed the potential for a blow-out at the land side toe of the levee and extended the area of concern to be pumping station. In this report, Eustis recommended dredging a test section in the 17th Street Canal to study the hydrostatic uplift pressure.

39.

From November 29 to December 16, 1983, a test section was dug just south of Interstate 10. Six piezometers were installed on the Jefferson Parish side of the 17th Street Canal to closely monitor changes in the hydrostatic pressures before, during, and after completion of the excavation. Eustis submitted a report on the test dredging to the Corps on January 17, 1984. The report concluded that the piezometers monitored no relevant changes upon the dredging of the test section. The report further concluded that the possibility of a blow-out during high water conditions in the canal was probably slight. However, the piezometer study of the test section did not account for the pre-existing, permeable soils of the canal, and therefore, the study's conclusions as to stability and permeability were unreliable.

40.

On June 13, 1984, the Corps issued a permit to "dredge to enlarge and maintain an area and install

and maintain flood walls and mooring structures in the 17th Street Canal (Metairie Relief Canal) from Pumping Station No. 6 to a point about 400 feet north of the Bucktown Pedestrian Bridge . . . " The "Statement of Findings" issued with the permit stated that factors considered in issuing the permit included, *inter alia*, "navigation," both present and prospective flood heights and flood plain use, and "other public interests."

41.

The dredging project was ultimately divided into the following phases: Phase I from Pump Station No. 6 to Interstate 10; Phase II-A from Interstate 10 to Hammond Highway – Orleans side; Phase II-B from Interstate 10 to Hammond Highway – Jefferson side; and Phase III from Hammond Highway to Lake Ponchatrain [sic].

42.

Phase I was completed June 1, 1984. However, because the SWB and the OLD could not reach an agreement with EJLD regarding Phase II of the Project, an extension of the permit work was granted by the Corps on February 20, 1987.

43.

On April 24, 1987, the Corps created a drawing with a sheet pile design that indicated that the sheet

pile tips were located 16 feet lower than the bottom of the 17th Street Canal. Even as the Operations Division of the Corps was addressing the SWB permit, therefore, the defendant's Engineering Division was addressing levee wall design that might incorporate the sheet piles that were permitted under the dredging project.

44.

On August 11, 1988, the SWB issued the work order for Phase III of the dredging project, and the job was completed on December 6, 1989. The work order for Phase II-A of the dredging project, which included the installation of the sheet piles on the Orleans Parish side of the canal, was issued on July 4, 1990, and the job was completed on January 10, 1992 by Boh Bros. Construction Co., Inc.

45.

The dredging activity conducted in the 17th Street Canal pursuant to the SWB permit was specified contractually to entail "bucket dredging" from a series of flex-float barges in the canal. The barges constituted vessels in navigation for the time period during which the dredging occurred.

C. The Construction of 17th Street Canal Concrete Monoliths

46.

Without any Congressional authorization or reauthorization, the Corps unilaterally deviated from a Congressionally-authorized "Barrier Plan," which called for the installation of floodgates at the mouth of the 17th Street Canal (at Lake Ponchatrain [sic]). Defendants SWB and OLD objected to the installation of these floodgates. The Corps thereafter proposed a "Parallel Protection Plan" for the 17th Street Canal, which called for increasing the height of the flood barriers on the east and west banks of the canal. This was part of an overall "High Level Plan," which replaced the "Barrier Plan" even though this change was not authorized by Congress.

47.

In connection with the "High Level Plan," the Corps considered three options – levees, T-walls, and I-walls. The Corps rejected the use of levees and T-walls because such construction was purportedly not economically justified. Instead, under the auspices of the Corps acting in connection with the OLD, the 17th Street Canal's flood walls were constructed with an "I-wall" design which called for the construction of a concrete monolith on top of the existing sheet pile (in place from the dredging project).

48.

The U.S. Army Corps of Engineers Manual on Engineering, Design and Construction of Levees, dated April 30, 2000, states that for stability reasons, flood walls utilizing the "I-wall" design rarely exceed seven (7) feet above ground surface, and that an inverted "T-wall" design is used when walls higher than seven feet are required. ***Nonetheless, the I-walls on the 17th Street Canal were built in concrete sections that rise eleven (11) feet about*** [sic] ***the ground.***

49.

Further, upon information and belief, Eustis performed a soil analysis in 1981, which entailed borings along the 17th Street Canal's levee. The borings revealed alternating layers of soft clay and black humus or peat – a soft, spongy soil comprised of decaying trees and other organic material – located fifteen to twenty-one feet below sea level. This layer of humus and peat substantially reduced the strength of the soil, particularly its strength in resisting lateral pressure and its ability to support the levee and flood walls under pressure from flood water.

50.

However, despite Eustis's findings regarding the weak soil, the Corps elected to build the walls of the 17th Street Canal with steel sheet piling driven to a depth that was seventeen (17) feet below sea level –

either above or in the middle of the layers of weak soil. To make matters worse, the soil adjacent to the 17th Street Canal levee subsided significantly after construction of the levee and flood wall, greatly reducing the amount of support that the land behind the levee provided against the pressure of flood waters.

51.

Then, in 1993, C.R. Pittman Construction Company, Inc. ("Pittman") was retained for the construction of the concrete monoliths atop the steel sheet pile wall along the 17th Street Canal. Pittman reported to the Corps that it was encountering major problems – specifically, the sheet pile walls and concrete monoliths were beginning to lean towards the canal side as the soil foundation was not of sufficient strength, rigidity and stability. Despite these concerns and problems, however, the Corps allowed the construction of the I-walls to continue, and Pittman built the concrete monoliths on top of the sheet pile driven into the unstable soil.

52.

Altogether, Defendants either failed to account for the soil and flood wall stability problems associated with the 17th Street Canal or proceeded with the engineering, design, and construction of the 17th Street Canal despite such problems. As the result of Defendants' combined negligence, the 17th Street

Canal failed during Hurricane Katrina, flooding the surrounding area and causing extensive damage to Plaintiff's personal possessions.

FACTUAL BACKGROUND REGARDING THE LONDON AVENUE CANAL

53.

The London Avenue Canal was constructed in the first half of the 19th century through an area that was mostly swampland and later became part of the City of New Orleans. The canal originally served a dual purpose of commerce and drainage, *i.e.*, it both permitted small boat traffic from Lake Ponchatrain [sic] to a section of New Orleans and provided for swamp drainage.

54.

The London Avenue Canal historically is, and at all times pertinent herein has been, a navigable waterway within the meaning of the general maritime law.

55.

The Corps, in coordination with the OLD and SWB, was responsible for the design and construction of the London Avenue Canal's levee system.

56.

A major project to upgrade the flood walls and bridges along the London Avenue Canal began in the early 1980's. The Corps had previously proposed placing a floodgate at the hurricane levees where the London Avenue Canal entered Lake Ponchatrain [sic] to provide protection from storm surge. The OLD and SWB, however, objected to this plan and instead favored building and raising the height of the parallel flood walls and levee structures along each side of the canal (the aforementioned "Parallel Protection Plan"). By 1991, the Corps, OLD and SWB had decided to proceed with this latter plan.

57.

The resulting flood walls along the London Avenue Canal were constructed atop earthen levees with an "I-wall" design consisting of steel sheet pilings driven into the compacted dirt atop the levee with reinforcing steel rods threaded through the top of the piling. Concrete was poured to encapsulate the top of the pilings and form the wall. The wall is composed of individual concrete slab sections (monoliths) that are linked together by rubbery gaskets (water stops) intended to prevent water from flowing between the monoliths and to allow the concrete to expand and contract.

58.

The entirety of the London Avenue Canal is constructed over beach sands of the Pine Island trend. The sands are located approximately 13 to 15 feet below the crowns of the I-wall levees of the canal, but are deeper at the vicinity where the northern breach occurred during Hurricane Katrina (station 113 to 118). The sand is covered with a veneer of peaty swamp deposits.

59.

Two key considerations in constructing an I-wall atop an earthen levee are 1) the composition of the soil into which the sheet piles will be driven and upon which the I-walls will rest and 2) the depth of the sheet piles based on the composition of the soil.

60.

Soil borings of the levee at the site of the London Avenue Canal south breach, which contributed to the catastrophe giving rise to this litigation, showed a layer of sand at a depth of 10 to 15 feet below sea level. Similar to the conditions at the south breach, soil borings of the levee at the site of London Avenue Canal north breach showed a layer of sand at a depth of 12 feet below sea level, as well as a layer of peat – a highly porous material that shrinks when dry and expands when wet, creating highly unstable soil conditions. Despite this layer of unstable sand, the sheet piles supporting the flood wall monoliths of the

London Avenue Canal were driven to a depth of 14 feet below sea level. ***Thus, the bottom of the sheet piles fell within a layer of sand.***

61.

As discussed *supra*, the flood walls along the London Avenue Canal are constructed with an "I-wall" design. The U.S. Army Corps of Engineers Manual on Engineering, Design and Construction of Levees dated April 30, 2000 states that, for stability reasons, flood walls utilizing the "I-wall" design rarely exceed seven (7) feet above ground surface and that an inverted "T-wall" design is used when walls higher than seven feet are required. ***Nonetheless, the flood walls at the breach sites of the London Avenue Canal, although built with an "I-wall" design, have concrete sections that rise to eleven (11) feet above ground surface.***

62.

Altogether, Defendants either failed to account for the soil and flood wall stability problems associated with the London Avenue Canal or proceeded with the engineering, design, and construction of the London Avenue Canal despite such problems. As the result of Defendants' combined negligence, the London Avenue Canal failed during Hurricane Katrina, flooding the surrounding area and causing extensive damage to Plaintiff's property.

FACTUAL BACKGROUND REGARDING THE ORLEANS AVENUE CANAL

63.

The Orleans Avenue Canal is a drainage canal located in Orleans Parish and is connected on its north end to Lake Pontchartrain and on its south end with the SWB's Pumping Station No. 7.

64.

The levee and floodwall protection system along the Orleans Canal was incomplete at the time Hurricane Katrina struck the New Orleans area. Specifically, the embankment fronting the pump station, which is about four hundred feet long, is six feet lower than the floodwalls along the canal. That is, the floodwalls in this area are simply missing. As a result, the levee and floodwall protection system designed and constructed by Defendants was incomplete and did not provide adequate flood protection for the surrounding area, causing extensive water damage to Plaintiff's property.

FACTUAL BACKGROUND REGARDING HURRICANE KATRINA AND THE FAILURE OF THE 17TH STREET, LONDON AVENUE, AND ORLEANS AVENUE CANALS

65.

Hurricane Katrina made landfall at 6:10 a.m. near Buras, Louisiana, on the morning of Monday,

August 29, 2005 with estimated maximum winds of 117 mph.

66.

On August 29, 2005, a major breach of 17th Street Canal occurred on the Orleans Parish side of the canal between 9:00 a.m. and 9:15 a.m. The breach rapidly scoured to depths below mean sea level, allowing lake and canal water to flow through the Orleans Parish bank of the canal well after the storm surge had subsided.

67.

The flooding as a result of the breach of the 17th Street Canal was totally catastrophic, and caused extensive damage to Plaintiff's property located at [Home Address Omitted].

68.

Upon information and belief, water began to enter the Gentilly area east of the London Avenue Canal between 7:00 and 8:00 a.m. on August 29, 2005, pouring through a 200-foot wide breach in the levee/flood wall on the east side of the London Avenue Canal, just north of the Mirabeau Avenue bridge. This breach is referred to as the "south breach" of the London Avenue Canal levee.

69.

The water from the south breach of the London Avenue Canal initially inundated the Gentilly area of New Orleans, an area bounded on the west by the London Avenue Canal, on the south by Gentilly Boulevard (the Metairie/Gentilly Ridge), on the east by the Inner Harbor Navigational Canal (the Industrial Canal) and on the north by Lake Ponchatrain [sic]. This water eventually combined with flood waters from other levee breaches inundating other parts of New Orleans, including Plaintiff's property located at [Home Address Omitted].

70.

Upon information and belief, water began to enter the Gentilly area west of the London Avenue Canal sometime before 9:00 a.m. on August 29, 2005, pouring through a 400-foot wide breach in the levee/flood wall on the west side of the London Avenue Canal, just south of the Robert E. Lee Bridge. This is referred to as the "north breach" of the London Avenue Canal levee.

71.

The water from the north breach of the London Avenue Canal initially inundated the Gentilly area of the city bounded on the west by Bayou St. John, on the north by Lake Ponchatrain [sic], on the east by the London Avenue Canal, and along the southeastern side on a line drawn along Chef Menteur Highway to

Gentilly Boulevard to Broad Street where it intersects with Orleans Avenue and then northwest along Orleans Avenue to Bayou St. John. This water eventually combined with flood waters from other levee breaches, inundating other parts of New Orleans, including Plaintiff's property located at [Home Address Omitted].

72.

Upon information and belief, at approximately 9:00 a.m. on August 29, 2005, as a result of defendants' inadequate design and construction of the floodwalls along the Orleans Avenue Canal, the embankment fronting the pump station at the foot of the canal was overtopped and left unprotected by missing floodwalls, causing significant water damage to the surrounding area.

73.

Notably, the storm surge associated with Hurricane Katrina did not overtop the flood walls at the sites of the 17th Street, London Avenue, and Orleans Avenue Canals. Indeed, the hurricane did not exceed the designed parameters for these canals. Thus, none of the flood wall breaches in question would have occurred as a result of Hurricane Katrina alone. Rather, these breaches occurred solely as a result of Defendants' faulty and negligent engineering, design, construction, and maintenance of the 17th Street, London Avenue, and Orleans Avenue Canals.

FACTUAL BACKGROUND REGARDING THE "LAKE PONTCHARTRAIN, LOUISIANA AND VICINITY, HURRICANE PROTECTION PROJECT"

74.

The majority of the levee and/or I-wall structures surrounding the New Orleans metropolitan area were constructed, in part, under the authority of the "Lake Pontchartrain, Louisiana and Vicinity, Hurricane Protection Project" ("Lake Pontchartrain Project"). Congress first authorized the implementation of the Lake Pontchartrain Project in the Flood Control Act of 1965 to provide hurricane protection to the areas surrounding Lake Pontchartrain. The Corps was primarily responsible for the project's design and construction.

75.

The Corps based its design and construction of the Lake Pontchartrain Project on the 1959 Standard Project Hurricane, which the Corps knew to be obsolete by 1972 when the construction of the Lake Pontchartrain Project actually began. As a result, the Corps designed and constructed the levees and floodwalls associated with the Lake Pontchartrain Project (including the 17th Street, London Avenue, and Orleans Avenue Canals) based on outdated specifications, leaving the hurricane protection system deficient and subjecting the New Orleans area to an increased threat of flooding.

76.

Additionally, as discussed *supra*, the Corps rejected the Congressionally-authorized Barrier Plan that called for a series of levees and other flood control structures, including barriers and flood control gates, to prevent storm surges from entering Lake Pontchartrain in the event of a hurricane. The Barrier Plan was purposefully selected by Congress over another alternative, the High-Level Plan, which would have excluded the barriers and flood control gates called for by the Barrier Plan and replaced them with higher levees and flood protection structures along the lakefront and other areas. Congress rejected the High-Level Plan because it was seriously flawed in many respects, including, but not limited to, prolonged construction time, displacement of residences, less efficient floodwalls, a hampered interior drainage system, less protection to the Northshore, and increased cost.

77.

Despite Congress's approval of the Barrier Plan and rejection of the High-Level Plan, Defendants elected to implement the High-Level Plan without obtaining the required authorization from Congress and knowing of the High-Level Plan's deficiencies.

78.

By the mid 1980s, as more residences were built along the canals, the Corps proposed to provide

greater protection from storm surge by implementing a parallel protection plan that called for raising the height of the existing levees and sheet pile floodwalls along each side of the canals as discussed *supra*, when implementing this parallel protection plan, Defendants elected to use I-walls rather than T-walls which would have provided a higher level of stability and reliability, especially in soft soil conditions. Construction of the I-walls along the 17th Street, London Avenue and Orleans Avenue Canals was completed by the end of the 1990s.

79.

On or about August 29, 2005, the I-walls designed and constructed by Defendants along the 17th Street and London Avenue Canals failed catastrophically due to Defendants' unauthorized, negligent, wanton and/or reckless, and unilateral decision to abandon the Congressionally-authorized Barrier Plan and implement the flawed parallel protection plan utilizing the I-wall design.

FACTUAL BACKGROUND REGARDING THE IPET REPORT

80.

The Corps has conceded that the failure of the New Orleans levee system, including the failure of the 17th Street, London Avenue, and Orleans Avenue Canals, was caused by the inadequate design, planning, and construction of the system's levees and

floodwalls. Following Hurricane Katrina, the Corps undertook a massive investigation of the reason for the levee and flood wall failures. This investigation was coordinated by the Interagency Performance Evaluation Taskforce ("IPET"). On March 26, 2007, IPET issued its Interim Final and Final Reports concerning the Performance Evaluation of the New Orleans and Southeast Louisiana Hurricane Protection System ("IPET Report").

81.

IPET was created by the Chief of Engineers, U.S. Army Corps of Engineers to evaluate the New Orleans hurricane protection system in light of Hurricane Katrina. IPET consisted of government, academic, and private sector scientists and engineers with extensive experience in the field of civil engineering. The report was consistently peer reviewed prior to publication.

82.

The IPET Report provides extensive background regarding the construction of the hurricane protection system and reveals that, almost from the start, construction was based on inaccurate assumptions and calculations. IPET found that deficiencies existed throughout the levee system, which was constructed at an elevation below design specifications.

83.

Overall, IPET summed up its analysis of the hurricane protection system with the concession that its performance was compromised by the incompleteness of the system, the inconsistency in levels of protection, and the lack of redundancy. Volume I of the IPET Report made the following overall conclusions regarding the failure of the levees:

- Flood control structures in the region were authorized and designed relative to a water level datum (mean sea level), but constructed relative to a geodetic vertical datum, ***incorrectly assumed to be equivalent to the water level datum. This resulted, in the case of the outfall canals, in structures built approximately 1 to 2 ft below the intended elevation.***

- Sections of the system were built below specified design elevations due to the ***use of an inaccurate relationship between the geodectic datum and mean sea level datum***.

- Coupled with the ***use of average values*** obtained from widely spaced samples in a geology with highly variable conditions, the structure was left ***with a marginal factor of safety***.

- The structures were constructed on weak and compressible soils.

- The hurricane protection in New Orleans was designed and developed in a piecemeal fashion, resulting in inconsistent levels of protection.

- ***Four breaches***, all in the outfall canals and all involving I-walls, ***occurred before water levels reached the top of the floodwalls. All were caused by foundation failures*** induced by the formation of a gap along the canal side of the floodwall. . . . ***This failure mechanism***, in particular the gap formation, ***was not considered in the original design of the structures***.

- The maintained condition of the levees was an additional negative factor in the performance of the system.

DAMAGES SUSTAINED BY PLAINTIFF

84.

Plaintiff avers that, to date, he has sustained total damages in the amount of $260,000.00, as a direct and proximate result of the negligence and/or fault of the Defendants herein. Plaintiff further avers that he continues to sustain damages as a direct and proximate result of the negligence and/or fault of the Defendants herein.

COUNT I:

NEGLIGENCE OF DEFENDANTS IN THE DREDGING OF THE 17TH STREET CANAL

85.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as though fully set forth herein.

86.

The Corps, OLD, EJLD, and SWB had the legal responsibility and duty to Plaintiff to cause, allow, and/or conduct the dredging of the 17th Street Canal in a manner that would not compromise the safety of the canal's levee/flood wall system. As discussed *supra*, the Corps, OLD, ELD [sic], and SWB ignored federal regulations and engineering standards and entirely disregarded overwhelming evidence that the dredging of the 17th Street Canal would dangerously compromise the canal's flood protection levee.

87.

As a result of the negligence of the Corps, OLD, ELD [sic], and SWB, the dredging of the 17th Street Canal worsened the stability of the canal's levee and flood walls and eventually contributed to the failure of the canal during Hurricane Katrina, causing extensive damage to Plaintiff. Defendants St. Paul and National Union, as the insurers of OLD and EJLD, are directly liable to Plaintiff for her damages.

88.

As a direct and proximate result of the negligence of the Corps, OLD, ELD [sic], and SWB in the dredging of the 17th Street Canal, Plaintiff suffered extensive damage, including, but not limited to, loss of personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial.

COUNT II:

NEGLIGENCE OF DEFENDANTS IN THE DESIGN, CONSTRUCTION AND MAINTENANCE OF THE 17TH STREET CANAL LEVEES AND FLOOD WALLS

89.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as through [sic] fully set forth herein.

90.

The Corps, OLD, ELD [sic], and SWB had a legal responsibility and duty to Plaintiff to cause, allow, and/or conduct the design and construction of the levees and flood walls of the 17th Street Canal in a manner that would not compromise the safety of the canal's levee/flood wall system. As discussed *supra*, the Corps, ELD [sic], and SWB knew or should have known of the deficiencies in the design and construction of the 17th Street Canal, particularly given the

nature of the soil in the area and the height and instability of the I-walls.

91.

The Corps, OLD, ELD [sic], and SWB negligently abandoned a Congressionally-authorized plan to install floodgates at the 17th Street Canal which would have lessened the storm surge form [sic] Hurricane Katrina, opting instead to use a "parallel" plan pursuant to which the 17th Street Canal levee and flood wall system was inadequately designed and built.

92.

The Corps, OLD, ELD [sic], and SWB negligently ignored multiple reports regarding the weak and unstable sand and soil below the 17th Street Canal and negligently designed and constructed the 17th Street Canal with I-walls built at 11 feet above ground, despite engineering guidelines discouraging the use of I-walls at heights greater than 7 feet above ground.

93.

The Corps, OLD, ELD [sic], and SWB negligently failed to properly maintain and inspect the 17th Street Canal levee/flood wall system which would have led to the correction of or exposure of its deficiencies such that the failure of the system could have been prevented.

94.

As a result of the negligence of the Corps, OLD, ELD [sic], and SWB, the design and construction of the 17th Street Canal worsened the stability of the canal's levee and flood walls and eventually contributed to the failure of the canal during Hurricane Katrina, causing extensive damage to Plaintiff. Defendants St. Paul and National Union, as the insurers of OLD and EJLD, are directly liable to Plaintiff for its damages.

95.

As a direct and proximate result of the negligence of the Corps, OLD, ELD [sic], and SWB in the design, construction, and maintenance of the 17th Street Canal, Plaintiff suffered extensive damage, including, but not limited to, loss of loss of [sic] personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial.

COUNT III:

NEGLIGENCE OF DEFENDANTS IN THE DESIGN, CONSTRUCTION AND MAINTENANCE OF THE LONDON AVENUE CANAL LEVEES AND FLOODWALLS

96.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as through [sic] fully set forth herein.

97.

The Corps, OLD, ELD [sic], and SWB had a legal responsibility and duty to Plaintiff to cause, allow, and/or conduct the design and construction of the levees and flood walls of the London Avenue Canal in a manner that would not compromise the safety of the canal's levee/flood wall system. As discussed *supra*, the Corps, OLD, ELD [sic], and SWB knew or should have known of the deficiencies in the design and construction of the London Avenue Canal, particularly given the nature of the sand and soil in the area and the height and instability of the I-walls.

98.

The Corps, OLD, ELD [sic], and SWB negligently abandoned a Congressionally-authorized plan to install floodgates at the London Avenue Canal which would have lessened the storm surge for a [sic] Hurricane Katrina, opting instead to use a "parallel" plan pursuant

to which the London Avenue Canal levee and flood wall system was inadequately designed and built.

99.

The Corps, OLD, ELD [sic], and SWB negligently entirely ignored multiple reports regarding the weak and unstable sand and soil below the London Avenue Canal and negligently designed and constructed the London Avenue Canal with I-walls built at 11 feet above ground, despite engineering guidelines discouraging the use of I-walls at heights greater than 7 feet above ground.

100.

The Corps, OLD, ELD [sic], and SWB negligently failed to properly maintain and inspect the London Avenue Canal levee/flood wall system which would have led to the correction of or exposure of its deficiencies such that the failure of the system could have been prevented.

101.

As a result of the negligence of the Corps, OLD, ELD [sic], and SWB, the design and construction of the London Avenue Canal worsened the stability of the canal's levee and flood walls and eventually contributed to the failure of the canal during Hurricane Katrina, causing extensive damage to Plaintiff. Defendants St. Paul and National Union, as the

insurers of OLD and EJLD, are directly liable to Plaintiff for her damages.

102.

As a direct and proximate result of negligence of the Corps, OLD, ELD [sic], and SWB in the design, construction, and maintenance of the London Avenue Canal, Plaintiff suffered extensive damage, including, but not limited to, loss of personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial.

COUNT IV:

NEGLIGENCE OF DEFENDANTS IN THE DESIGN, CONSTRUCTION AND MAINTENANCE OF THE ORLEANS AVENUE CANAL LEVEES AND FLOODWALLS

103.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as through [sic] fully set forth herein.

104.

The Corps, OLD, ELD [sic], and SWB had a legal responsibility and duty to Plaintiff to cause, allow, and/or conduct the design and construction of the levees and flood walls of the Orleans Avenue Canal in a manner that would not compromise the safety of

the canal's levee/flood wall system. As discussed *supra*, the Corps, OLD, ELD [sic], and SWB knew or should have known of the deficiencies in the design and construction of the Orleans Avenue Canal, particularly given the embankment fronting the pump station at the foot of the canal that was left unprotected by missing floodwalls.

105.

As a result of the negligence of the Corps, OLD, ELD [sic], and SWB, the design and construction of the Orleans Avenue Canal failed to provide adequate flood protection to the surrounding area, causing extensive damage to Plaintiff. Defendants St. Paul and National Union, as the insurers of OLD and EJLD, are directly liable to Plaintiff for her damages.

106.

As a direct and proximate result of the negligence of the Corps, OLD, ELD [sic], and SWB in the design, construction, and maintenance of the London Avenue Canal, Plaintiff suffered extensive damage, including, but not limited to, loss of personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial.

COUNT IV:

DEFENDANTS' NEGLIGENCE IN IMPLEMENTING THE "LAKE PONTCHARTRAIN LOUISIANA AND VICINITY, HURRICANE PROTECTION PROJECT"

107.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as through fully set forth herein.

108.

The Corps, OLD, ELD [sic], and SWB had a legal responsibility and duty to Plaintiff to cause, allow, and/or conduct the implementation of the Lake Pontchartrain Project in a manner that would not compromise the safety of the hurricane protection system. As discussed *supra*, the Corps, OLD, ELD [sic], and SWB knew or should have known of the deficiencies in the implementation of the Lake Pontchartrain Project as the Corps, OLD, ELD [sic], and SWB purposefully rejected the Congressionally-authorized Barrier Plan and instead implemented a parallel protection plan utilizing a flawed I-wall design.

109.

As a result of the negligence of the Corps, OLD, ELD [sic], and SWB, the 17th Street and London Avenue Canals failed catastrophically, causing

Plaintiff to suffer extensive age, including, but not limited to, loss of property (both immovable and movable), loss of personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial. Defendants St. Paul and National Union, as the insurers of OLD and EJLD, are directly able to Plaintiff for her damages.

COUNT V:

STRICT LIABILITY

110.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as through fully set forth herein.

111.

The Corps, OLD, ELD [sic], and SWB had, at all relevant times, the care, custody and control, and thus the *garde* of the 17th Street, London Avenue, and Orleans Avenue Canals and the levees/floodwalls adjacent thereto. As such they are strictly liable to Plaintiff for his damages resulting from the vices and/or defects within these canals and their levees/floodwalls, in accordance with Louisiana Civil Code article 2317, *et seq.*

112.

The the [sic] Corps, OLD, ELD [sic], and SWB knew, or in the exercise of reasonable care should have known, of the vices that caused Plaintiff's damages. Defendants St. Paul and National Union, as the insurers of OLD and EJLD, are directly liable for Plaintiff's injuries. Further, in the exercise of reasonable care by the Corps, OLD, ELD [sic], and SWB, Plaintiff's damages could have been prevented.

113.

Plaintiff expressly pleads the doctrine of *Res Ipsa Loquitur* against each and all of the defendants, as may be appropriate under the circumstances and permitted by law.

COUNT VI:

NUISANCE

114.

Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as through [sic] fully set forth herein.

115.

As the proprietors of the 17th Street, London Avenue, and Orleans Avenue Canals, the Corps, OLD, ELD [sic], and SWB had a duty, pursuant to Louisiana Civil Code article 667, to refrain from creating a

nuisance with respect to these canals. Because of the negligence of the Corps, OLD, ELD [sic], and SWB, however, Plaintiff has been deprived from the enjoyment of his property. Thus, the Corps, OLD, ELD [sic], and SWB have created a nuisance by ignoring the hazardous conditions in the 17th Street, London Avenue, and Orleans Avenue Canals. Defendants St. Paul and National Union, as the insurers of OLD and EJSD, are directly liable to Plaintiff for her damages.

116.

Defendants have violated the common law doctrine of nuisance. The negligent and/or reckless actions of Defendants in creating and ignoring the hazardous conditions in the hurricane protection system have caused unique and significant harm as discussed *supra* and have deprived Plaintiff from the use and enjoyment of its property. Thus, Defendants are liable for Plaintiff's damages. As a result of Defendants' creation of a nuisance and violation of their federal common law duty, Plaintiff suffered extensive damage, including, but not limited to, loss of personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that:

(1) Defendants be held liable for all of Plaintiff's damages caused by Defendants' negligence in the dredging of the 17th Street Canal, including, but not limited to, Plaintiff's loss of personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial;

(2) Defendants be held liable for all of Plaintiff's damages caused by Defendants' negligence in the design, construction, and maintenance of the 17th Street Canal, including, but not limited to, Plaintiff's loss of personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial;

(3) Defendants be held liable for all of Plaintiff's damages caused by Defendants' negligence in the design, construction, and maintenance of the London Avenue Canal, including, but not limited to, Plaintiff's loss of personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial;

(4) Defendants be held liable for all of Plaintiff's damages caused by Defendants' negligence in the design, construction, and maintenance of the Orleans Avenue Canal including, but not limited to, Plaintiff's loss of personal property, evacuation

expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial;

(5) Defendants be held liable for all of Plaintiff's damages caused by Defendants' negligence in the implementation of the Lake Pontchartrain Project, including, but not limited to, Plaintiff's loss of personal property, evacuation expenses, mental anguish, emotional distress, attorneys' fees, and other special damages to be proven at trial;

(6) Defendants be held strictly liable for Plaintiff's damages resulting from the vices and/or defects within these canals and their levees/floodwalls, in accordance with Louisiana Civil Code article 2317, *et seq.* and the doctrine of *Res Ipsa Loquitur*;

(7) Defendants be held liable for Plaintiff's damages resulting from Defendants' creation of a nuisance in creating and ignoring the hazardous conditions of the 17th Street, London Avenue, and Orleans Avenue Canals.

(8) Defendants be held liable for all of Plaintiff's attorneys fees and costs associated with this litigation pursuant to the Federal Tort Claims Act and/or the Equal Access to Judgments Act;

(9) Defendants be held liable for all pre-judgment and post-judgment interest on all amounts awarded to Plaintiff; and

(10) Any other equitable and general relief in the nature of this case will allow.

/s/ Martha Y. Curtis

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20446 (T.A.)
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ATTORNEYS FOR JARED REESE

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO.: 05-11660 DIV. "L" DOCKET:

SUSAN AND WILLIAM LAURENDINE, AL LEBOUEF, ALINE HODGES, PIERRE ASCANI, THERESA HARVEY, THE HONORABLE DALE ATKINS AND ANITA L. SARRAT

VERSUS

THE BOARD OF COMMISSIONERS FOR THE ORLEANS LEVEE DISTRICT, PARISH OF ORLEANS

FILED: _____ DEPUTY CLERK: _____

SECOND SUPPLEMENTAL AND AMENDING PETITION

(Filed Jul. 10, 2006)

NOW INTO COURT, through undersigned counsel come plaintiffs, SUSAN AND WILLIAM LAURDNDINE [sic], AL LEBOUEF, ALINE HODGES, PIERRE ASCANI, THERESA HARVEY, THE HONORABLE DALE ATKINS AND ANITA L. SARRAT who move this Honorable Court to allow them to supplement and amend their original petition and First Supplemental and Amending Petitions filed herein in the follow respects:

1.

By supplementing and amending the caption of this lawsuit to read as follows:

SUSAN AND WILLIAM LAURENDINE,
AL LEBOUEF, ALINE HODGES, PIERRE ASCANI,
THERESA HARVEY, THE HONORABLE
DALE ATKINS AND ANITA L. SARRAT

VERSUS

THE BOARD OF COMMISSIONERS FOR
THE ORLEANS LEVEE DISTRICT,
PARISH OF ORLEANS, DEPARTMENT
OF TRANSPORTATION AND DEVELOPMENT,
SEWERAGE AND WATER BOARD AND
THE STATE OF LOUISIANA

2.

By supplementing and amending Paragraph No. 1 to read as follows:

1.

Defendant, the BOARD OF COMMISSIONERS FOR THE ORLEANS LEVEE DISTRICT, PARISH OF ORLEANS is a political subdivision of the State of Louisiana domiciled in Orleans Parish and, at all pertinent times hereto was responsible for providing flood protection for the Parish of Orleans, State of Louisiana and for the efficient operation and maintenance of all of the levee structures and facilities in addition to continuous inspection and maintenance of the levees and floodwalls; defendant, DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, is a state agency organized within this state and, at all pertinent times hereto was responsible for maintaining and inspecting the levees in the Parishes of

Orleans and Jefferson, State of Louisiana, more particularly the 17th Street Canal levee and the London Avenue Canal levee; defendant, SEWERAGE AND WATER BOARD, is a municipal agency existing within the Parish of Orleans, State of Louisiana and, at all pertinent times hereto was responsible for inspection and maintenance procedures performed on Orleans Parish levees as well as the dredging of their canals; defendant, THE STATE OF LOUISIANA is a sovereign state and, at all pertinent times hereto was responsible for financing, overseeing, maintaining and supervising activities of the Board of Commissioners for the Orleans Levee District and the DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT as well as insuring that the citizens of Orleans and Jefferson Parishes were safe from levee brakes [sic].

3.

By supplementing and amending the original and first supplemental and amending petitions to add 5a, 5b, 5c, 5d, 5e, 5f and 5g to read as follows:

5a.

Upon information and belief, before the levees and floodwaters were constructed, soil borings were taken to assess the strength of the soil and its ability to withstand the force of flood waters [sic] pushing against it and still remain in place.

5b.

Upon information and belief, a soil study was performed in 1981 which took soil borings along the location of the 17th Street Canal Levee.

5c.

The soil borings revealed alternating layers of soft clay and soft, black humus or peat, a soft, spongy soil comprised of decaying trees and other organic material, from fifteen to twenty-one feet below sea level.

5d.

The layer of humus or peat substantially reduced the strength of the soil, particularly its strength in resisting lateral pressure and its ability to support the 17th Street Canal Levee and London Canal when they were under pressure from floodwater.

5e.

Despite the presence of a layer of soft, spongy material at a depth of fifteen (15) to twenty one (21) feet below sea level, the flood walls of the 17th Street Canal Levee and London Canal were constructed with steel sheet piling driven to a depth that was seventeen (17) feet below sea level. At such depths, the protective sheet pilings ended above or right in the middle of layers of weak soil.

5f.

Additionally, the soil adjacent to the 17th Street Canal and London Canal Levees subsided significantly after construction of the levee and floodwall, thereby significantly reduced the amount of support that the land behind the levee provided against the pressure of floodwaters.

5g.

Upon information and belief, the soil studies performed in connection with construction of the 17th Street Canal and London Canal Levees were not conducted with a reasonable degree of care and diligence and failed to account for the possible weakening of the soil in connection with the effect of subsidence of land on the protected side of the levee, soft soils at the base of the levee, and the soil that was weakened as flood waters [sic] pushed through subterranean levels under the levee and floodwall. Alternatively, the soil studies failed to warn against the dangers that should, in the exercise of reasonable care, have been anticipated in connection when the pressure of flood water was applied to soil beneath the 17th Street Canal Levee.

4.

By supplementing and amending Paragraph 6 to read as follows:

6.

Petitioners allege that the defendants, THE BOARD OF COMMISSIONERS FOR THE ORLEANS

LEVEE DISTRICT, PARISH OF ORLEANS, DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, SEWERAGE AND WATER BOARD AND THE STATE OF LOUISIANA were jointly, severally and in solido negligent and that such negligence caused and/or contributed to the levee failures in the following respects:

THE BOARD OF COMMISSIONERS FOR THE ORLEANS LEVEE DISTRICT, PARISH OF ORLEANS AND THE STATE OF LOUISIANA

a) Failing to inspect, maintain, monitor, protect and/or repair the levees and floodwalls along the 17th Street Canal and London Avenue Canal;

b) Failing to check the flood walls for their ability to withstand cascades of lake water that may push over levees during a hurricane;

c) Failing to interlock the flood walls [sic] and/or place the top railing or similar systems to bind the walls together;

d) Using soil to shore the levees which was not sufficient to ensure protection against a flood or natural disaster.

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

a) Allow trees, debris and limbs to remain along side [sic] the levee system;

b) Failing to clean the sides of the levee system and institute proper shoring procedures;

c) Other acts of negligence to be shown at the trial of this matter.

SEWERAGE AND WATER BOARD

a) Dredging the waterways and tributaries improperly and to a degree that would produces [sic] a tidal surge;

b) Failing to inspect the levees for possible leaks;

c) Failing to institute proper inspection and testing procedures to ensure that the dredging of the levee system was safe for the citizens of New Orleans.

5.

By supplementing and amending Paragraph 8a to read as follows:

8a.

The proposed class representatives and named plaintiffs seek to represent the following class:

All residents, domicilaries, property owners and business owners of the parishes of Orleans and Jefferson in the State of Louisiana whose persons, properties or businesses were damaged by flooding caused by the failure of the 17th Street Canal and London Avenue Canal hurricane protective levees and floodwalls in New Orleans, Louisiana on or after

August 29, 2005, who may suffer such injury or damage in the future as a result thereof or who have sustained a justifiable fear of sustaining such injury or damage in the future as a result thereof.

WHEREFORE, petitioners, reiterating and reavering each and every allegation of their original and First Supplemental and Amending Petitions as though copied at length herein, pray that their original and First Supplemental and Amending Petitions be supplemented and amended in the above particulars and that, after all legal delays and due proceedings had, there be judgment herein favor of plaintiffs, SUSAN AND WILLIAM LAURENDINE, AL LEBOUEF, ALINE HODGES, PIERRE ASCANI, THERESA HARVEY, THE HONORABLE DALE ATKINS AND ANITA L. SARRAT and against defendants, THE BOARD OF COMMISSIONERS FOR THE ORLEANS LEVEE DISTRICT, PARISH OF ORLEANS, DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, SEWERAGE AND WATER BOARD AND THE STATE OF LOUISIANA, jointly, severally and in solido for an amount that is reasonable under the circumstances, for class action certification, for legal interest thereon from date of judicial demand until paid, for all costs of these proceedings,

for trial by jury and for all general and equitable relief.

Respectfully submitted:

/s/ Darleen Jacobs
DARLEEN M. JACOBS, ESQ.
(#7208), T.A.
ROBERT G. HARVEY, ESQ.
CHARLES J. IMBORNONE, ESQ.
KENNETH CHARBONNET, ESQ.
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823 St. Louis St.
New Orleans, LA 70112
(504) 522-3287
Attorneys for Plaintiffs

PLEASE SERVE DEFENDANT
AS FOLLOWS:

BOARD OF COMMISSIONERS
ORLEANS PARISH LEVEE DISTRICT,
PARISH OF ORLEANS
Through its attorney of record
Thomas P. Anzelmo, Esq.
3445 N. Causeway Blvd., Ste. 800
Metairie, LA 70002

DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT
(Along with the original and First Supplemental and Amending Petition)
1201 Capital Access Road
Baton Rouge, LA 70804

SEWERAGE AND WATER BOARD OF
NEW ORLEANS
(Along with the original and First Supplemental and
Amending Petition)
625 St. Joseph Street
New Orleans, LA 70165

STATE OF LOUISIANA
(Along with the original and First Supplemental and
Amending Petition)
Through the Honorable Governor Kathleen Blanco
Baton Rouge, LA

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO.: 05-11660 DIV. "L" DOCKET:

SUSAN AND WILLIAM LAURENDINE, AL LEBOUEF, ALINE HODGES, PIERRE ASCANI, THERESA HARVEY, THE HONORABLE DALE ATKINS AND ANITA L. SARRAT

VERSUS

THE BOARD OF COMMISSIONERS FOR THE ORLEANS LEVEE DISTRICT, PARISH OF ORLEANS

FILED: _____ DEPUTY CLERK: _____

ORDER

Considering the above and foregoing:

Let this Second Supplemental and Amending Petition be filed as prayed for herein.

New Orleans, Louisiana this 17th day of July, 2006.

/s/ K.A. Reese
JUDGE

CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

SUSAN and WILLIAM LAURENDINE, et al — NO. 05-11660

VERSUS

THE BOARD OF COMMISSIONERS FOR THE ORLEANS LEVEE DISTRICT, PARISH OF ORLEANS — DIVISION "L"

Proceedings held in the above-entitled and numbered cause, heard in Open Court, before the HONORABLE MICHAEL G. BAGNERIS, Judge Presiding, on the 21st day of May, 2008.

APPEARANCES:

DARLEEN M. JACOBS, ESQ.
Attorney for the Plaintiff

THOMAS P. ANZELMO, ESQ.
Attorney for The Board of Commissioners of the Orleans Levee District, Parish of Orleans

CHARLES M. LANIER, JR., ESQ.
Attorney for The Sewerage & Water Board of New Orleans

JOE HASSINGER, ESQ.
Attorney for State of Louisiana, Department of Transportation & Development

REPORTED BY:
LESLIE CALLAIS, C.C.R.
Official Court Reporter

[2] WITNESS INDEX

HON. KERN A. REESE	PAGE
Examination by Mr. Anzelmo	23, 47
Examination by Ms. Jacobs	44

[3] PROCEEDINGS

THE CLERK: The first matter on today's docket is Susan and William Laurendine, et al v. Board of Commissioners for the Orleans Levee District, Parish of Orleans, 05-11660.

MS. JACOBS: Darleen M. Jacobs in the Laurendine matter. We do have a temporary committee appointed that's not been appointed by the Court, but I represent the Plaintiff's management committee if, in fact, it's going to be appointed in the Laurendine matter.

MR. ANZELMO: Good morning, Your Honor. May it please the Court, Tommy Anzelmo representing the Orleans Levee District.

MR. LANIER: Charles Lanier on behalf of the Sewerage & Water Board of New Orleans.

MR. HASSINGER: Joe Hassinger representing the DOTD.

THE COURT: Let me ask you a question, Mr. Anzelmo, as we get started. What is scheduled today is a motion to recuse Judge Reese. If I appreciate your pleadings, you have also re-urged the motion to recuse me from re-hearing the recusal of Judge Reese. Is that correct?

[4] MR. ANZELMO: Mostly. Not re-hearing. From hearing. It's the original instance. From hearing –

THE COURT: Well, you did it once before.

MR. ANZELMO: Yes.

THE COURT: That's why I call it a re-hearing.

MR. ANZELMO: My distinction was because we never got there, there was nothing –

THE COURT: We did get there, as I appreciate it.

MR. ANZELMO: We only reached Your Honor's –

THE COURT: – recusal.

MR. ANZELMO: – recusal.

THE COURT: That's what I'm talking about.

MR. ANZELMO: Then we're good.

THE COURT: Let me try again.

MR. ANZELMO: We're good then. Then I agree with you. I withdraw any reservations. We're good.

THE COURT: [5] Let me make sure I understand what you just withdrew.

MR. ANZELMO: I withdrew my comments, Your Honor, that we weren't re-hearing something.

THE COURT: But you have re-urged the recusal of this judge?

MR. ANZELMO: Yes, Your Honor.

THE COURT: Now, clear something up for me. Now, I understand that the re-urging was done as a result of facts which occurred after my original hearing and after the Supreme Court had pronounced this ruling.

MR. ANZELMO: Correct.

THE COURT: And to be perfectly candid with you, I wasn't aware of my position until yesterday when I realized that part of the lawsuit that was filed in Federal Court included the Orleans Levee District.

MR. ANZELMO: And multiple other defendants.

THE COURT: Right. I was aware of the Corps of Engineers. I was not aware of who all was involved in the "et al" part of that litigation.

And let's assume for a moment that if [6] I had been allotted the case as the presiding judge, let's go on the assumption that, not based on the Code of Procedure but on the canons, I would have recused myself based on the canon which addresses itself to the appearance aspect.

MR. ANZELMO: 3(C).

THE COURT: Even if you make that assumption, why would that bar me from hearing the recusal of Judge Reese? So, to put it another way, since the only issue involved in the recusal of the judge is the judge's impartiality, which has nothing to do with the merits of that case, I'm looking to ascertain whether there are sufficient facts under the law to determine whether Judge Reese is capable of being impartial. Now, even assuming that I'm recusable as it relates to the merits of the case, how does that impact my ability to judge a judge's impartiality?

MR. ANZELMO: Would you mind if I grab that cup of water before I speak?

THE COURT: Absolutely not.

MS. JACOBS: May I just say something, Judge? I just was handed that this morning just minutes ago. So, I want the Court to know [7] that we were not served with it. He handed it to me.

MR. ANZELMO: As I explained to Ms. Jacobs, it was an error that I discovered last night that I had these recusal pleadings hand delivered to Mr. Gamble by mistake as opposed to Ms. Jacobs. When I realized that, I called her last night, offered to drive them to her home, so we wouldn't have to present it this morning, and she said I could bring it to her this morning. But it was my error.

Back now to the direct question. It's our position, Your Honor, first of all, if you would have recused yourself, had you been the original trial judge in this case, recognizing that you could take no step in the proceeding, you would have recognized it on your own, based on the canons, that you shouldn't be involved in the case because you got a pending action against the Orleans Levee District, the appearance that it might create, that you are a putative class member of the action upon which you would be asked to judge.

Now, Your Honor, in this particular case, taking the facts as they are, we know that you have sued my client. We know that you are a member of the putative class as it is stated right now. We know that under all of the steps that we would take to [8] review, should we have to bring a recusal against you if you were the judge originally, we know all the steps now under the due process test of the 14th Amendment, the steps in the Art. 151, and the canons, that we put all those together and suggest to you – not suggest – we state to Your Honor that you are

prohibited from taking any step in these pleadings because while –

THE COURT: Any step in the proceedings. I don't have any problems with the merits itself in terms of those proceedings. I want you to get to –

MR. ANZELMO: But its the any step. This is a step in those proceedings. Because while you acknowledge, I believe, that you would be recusable, you would have recused yourself in the first instance, we say that you cannot take this step because decisions – You may make a decision that, Judge Reese, it's okay for Judge Reese to sit on this case. Because there is the appearance that you may make the decision that he's the right guy for the case, because it will benefit Your Honor, because you have a definite financial interest in the case, in the outcome of the case, the case that he's going to decide, the case in which you're a putative class member, Judge, I'm not [9] saying that you would make a decision based on that analysis, but you could make a decision.

As we set out in our brief, the United States Supreme Court, we're looking at an Alabama Supreme Court justice. He had a case against an insurance company that involved bad faith, but it wasn't even the insurance company that was in the case that he was going to be called upon to judge. And the Supreme Court said, no, that violates due process because it creates the appearance of the impropriety or the appearance that justice may not be partial.

We're talking now, Your Honor, the raw, the purest of justice that we can discuss, and that is because of all of the events that we know that have happened here and that exists right now that not only should – It wouldn't make any difference if it was another judge that was up there. Any judge who's filed a suit against my client who's going to take a step that's going to make a decision that can affect my client such as whether a judge should be recused directly impacts upon me and implicates every argument that we've made about due process, Art. 151 recusal, and the judicial canons.

THE COURT: You missed my point. I mean, not missed my point. You missed the basis for [10] which I said I would recuse, I would recuse based on the appearance component, not because there was any violation of 151 in terms of a bias or prejudice on my part. But I understand how a reasonable mind could conclude what you just articulated. And that's me.

And under the canons, which is what I said I would do, under the canons, there are only two entities that can do that: me and the Supreme Court, because they're the final adjudicator of the canons.

But as it relates to my making a decision, having nothing to do with the merits of the case, this doesn't have to be this case that were talking about, I'm making a decision as to whether Judge Reese is capable of being impartial. Now, if there is some basis that you can demonstrate based on 151 that he is incapable

of being impartial based on the Code, then my duty is clear. If there is a canon situation, then I can make a recommendation, but not a determination, because the canons is something the judge him or herself has to determine as to whether that appearance exists. And if they make the wrong call, then the Supreme Court will tell them that they made the wrong call as was done in the In Re Cooks matter.

So, even assuming everything that you [11] assumed as it relates to this judge, I'm still not seeing how that impacts my ability to ascertain whether Judge Reese is impartial or not, unless you're telling me that the appearance that exists as it relates to the merits of the case also flows over to a determination of impartiality.

MR. ANZELMO: The last thing that you said is certainly a part of my argument and it was encompassed in what I said earlier. When I was responding to Your Honor, I understood the narrowness of what you said about Canon 3(C) and your determination. But in response to your question as to why you should not act, I explained all of the reasons why I felt that you should not act.

And I'm going to take it down even further. Your Honor and your wife have sued my client; Judge Reese and his wife have sued my client on the identical basis.

THE COURT: Stop. Stop right there. Then assuming, because that's not evidence in this matter as of yet because we haven't heard that, but assuming

that what you just said is correct and I have already stated what I would do.

MR. ANZELMO: Yes, Your Honor, I would expect – That's why I put in my motion, Your Honor, [12] that should we choose to go forward, I put in the renewed motion, the new motion, all of the reasons why Judge Reese should be recused. And I'm almost expecting that if Judge Reese would come here and maybe he missed, as you did, that he had sued the Orleans – that his wife and I believe it's his kids had sued the Orleans Levee District, that under 3(C) of the canons, he recuses himself.

But short of that, Your Honor, in the purest form of how we would consider the question of impartiality and the appearance of the appropriateness of your actions and reserving my argument, because Your Honor has made this a pure bias analysis, and we respectfully disagree that it's not a pure bias analysis because we've argued, as we did before, that under Art. 151(B)(4), there is no prejudice or bias component in it. That is, it says the judge should recuse –

THE COURT: I usually have it out here.

MR. ANZELMO: Your Honor, I forgot to bring it and one of my esteemed colleagues brought it to me. Here it is.

Your Honor, the dichotomy that I'm drawing is if you look at 151(B)(4), there is no component of bias or prejudice. 151(B)(5) inserts bias, prejudice, interest [13] in the outcome. That's (B)(5). (B)(4) does not have

that component to it. And that's why the Supreme – I'll let you read it.

THE COURT: Okay.

MR. ANZELMO: The Supreme Court addressed just that discrete issue concerning the –

THE COURT: You just say that because (B)(4), if you read just the appropriate parts, it says, "The judge of any court may be recused when he is the spouse of a party."

MS. JACOBS: May.

THE COURT: I got the "may." "May be recused when he is the spouse of a party."

MR. ANZELMO: *In Re Cooks*, Your Honor, made that a "shall."

THE COURT: I'm sorry?

MR. ANZELMO: *In Re Cooks* made that a "shall".

THE COURT: No. *In Re Cooks*, without having –

MR. ANZELMO: Can I read the part? It might be helpful to us, Your Honor.

In discussing Art. 151(B)(4), the [14] Supreme Court, in *In Re Cooks*, held that a judge's recusal is essentially mandated in the event that his spouse is a party, stating, "Although 151(B)(4) says the judge may be recused where the judge is the spouse of a

party, we can foresee no instances where a judge would not be required to recuse himself where he is the spouse of a party in the cause."

To me they've inserted the "shall" component. I mean, you can read the decision in total, but –

THE COURT: And this is the 2008 edition, and it still has the word "may". And the Supreme Court allowed the door open, because they said that they could envision no circumstance, but that doesn't mean that there isn't one. In the event that one is presented, they want to be able to seize upon those facts.

MR. ANZELMO: Well, Your Honor, it says, "We can foresee no instances."

THE COURT: It still hasn't been changed.

MR. ANZELMO: Yes, Your Honor, I will not dispute that.

THE COURT: And the legislature can easily take out "may" and insert "shall". They haven't [15] done that.

But be that as it may, I think that's even a stronger argument when you read that coupled with Canon 3(C) that we go back to the appearance component which, again, if I state on the record what I would do as it relates to if I had this matter as the presiding judge, if it was allotted to me, I will tell

you, based on Canon 3(C), I would recuse myself if there was a motion to recuse to get rid of the appearance.

Now, that's me. I don't see how that impacts my ability to determine whether a judge, who right now I just have allegations as to why he should be recused, and that's why there would be a hearing as to whether or not that party should be recused, I don't see how I would be subjected to any one of the articles under 151 or any of the canons as it relates to my ability to determine the impartiality of a judge in a case.

MR. ANZELMO: Thank you, Your Honor. And I see my arguments are unpersuasive.

I will close by saying this. In this particular factual situation both Your Honor and his wife, and Judge Reese and his wife, have brought claims against my client.

THE COURT: Have we determined that is a fact? I [16] see your opposing counsel. It's an allegation.

MR. ANZELMO: I think it's a little more than an allegation, Your Honor, when I enclosed the exhibits which presented Your Honor the copy of the lawsuits in the re-urged motion to recuse Your Honor. I mean, the Code of Civil Procedure would be such that – and I think you earlier mentioned this – that if I present good grounds –

THE COURT: It's a supported allegation. But what if the judge came in and said, "Oh, I was unaware of that and I dismissed that"? I haven't said he has. But I'm saying we have to adduce the facts. And if he hasn't, counsel, I don't know how else to say it except to say if he hasn't, I think that there's a strong –

MR. ANZELMO: Yes, Your Honor.

THE COURT: – there's a strong case that has been presented.

MR. ANZELMO: And thank you, Your Honor. If you wouldn't mind, insofar as this aspect of the motion that I've made directed toward the particular recusal of Your Honor from taking any steps today, what I'd like to do, in consideration of what Your Honor [17] said, if I could offer, introduce, and file into the record a copy of my latest motion with all exhibits attached, so that my record would be complete insofar as the basis upon which I moved that Your Honor should not take any further steps.

Unless Your Honor has any additional questions, I'll be glad to re-urge, in essence, reiterate what I've put in my motion as to what I feel are the bases, again, under the Code of Civil Procedure the due process requirements of the 14th Amendment and the judicial canons as to why Your Honor should not take any steps in this proceeding today. Thank you very much, Your Honor.

MS. JACOBS: May it please the Court, Your Honor, Darleen Jacobs in the Laurendine case. I'm pleased to be representing my sister and other people, including Bob Harvey's wife and other people in there.

This is the same song and dance that counsel had in Federal Court before Judge Duval in order to get a delay. Danced all around the Federal Court. Judge Duval didn't buy it and he didn't recuse himself and now he's presiding over the levee cases.

Its been almost three years. And every time a judge gets the levee case, they file a motion to recuse because they [18] know it's going to be another delay. That's unconscionable for the citizens of this area to have to wait that long. We have to have this issue resolved, and it should be resolved fast, not only for the Plaintiffs, but you got a team of defense lawyers out here who have their staffs here ready to get started and start taking depositions in this case.

Now, once again, he brings up the song and dance, and I'm just hearing this, this morning, that Your Honor should be recused. First of all, Your Honor, as I recall, on the pleadings that they gave me right now filed the case in Federal Court which mainly targets the Corps of Engineers, not the Levee Board.

And all you're doing right now is ruling on whether or not Judge Reese can be fair. That's all you're going to rule on. And to me that's not a very hard thing to do, because we all know Judge Reese.

And I can tell you he's as evenhanded as any judge up here. Nevertheless, I had subpoenaed Judge Reese for this hearing, and I understand that he's waiting to be called from Your Honor so that we can question him on his fairness.

I would like to point out to the Court that Art. 151 requires a finding of actual bias or prejudice, even the substantial appearance of the possibility of bias, or [19] the mere appearance of inappropriateness are not causes for removal of a judge from presiding in the case.

And you're not going to preside in the case in chief. You're only going to decide whether or not Judge Reese can be fair, as I understand it.

The *Edwards v. Daugherty* case which I've cited in my memorandum has been quoted ad nauseam in recusal motions. Bias, prejudice, or personal interest to warrant recusal must be of a substantial nature, and based on more than conclusionary allegations, according to the *Augman v. City of Morgan City*.

You're not going to be a witness in this case. We already have a list of Plaintiffs who we hope will be selected as bellwethers. Neither will Judge Reese or his wife and your wife will not be a witness in this case. You will not participate in this case. You won't even testify. You won't call witnesses in the case, neither will Judge Reese. And it's a jury case. So, the only thing a presiding judge is going to do is really rule on the admissibility of evidence, and, frankly,

most of that's been ruled on by Judge Duval. We've trying aspects of this case in Federal Court.

THE COURT: How would you respond to this [20] question, Ms. Jacobs? Even if – and I'll use me, because I've already said what I would do – even though I would not be called as a witness, since I am a party, haven't I already made a determination of the merits of my position since I am a party in the case?

MS. JACOBS: I don't believe you have. You haven't filed in Civil District Court to my knowledge. You have filed in Federal Court.

THE COURT: No, I have not filed in Civil District Court. But the allegations that are raised in the federal claim are I won't say identical but they're extremely similar to the allegations raised in Civil District Court.

MS. JACOBS: But you're not being asked to rule on allegations. You're being asked to rule on whether or not a judge is biased or not biased.

THE COURT: No. I was talking about in terms of the presiding judge.

MS. JACOBS: If you were the presiding judge, then I'm sure I would have some questions for you, just as I'm going to have for Judge Reese shortly under direct examination. [21] You want my own opinion? Yes, I think you could be fair. Could you handle the case? Yes.

And I'm going back to Judge Levy, and I hate to bring up my poor husband that I dearly loved, but I have to tell you he was a judge and I was a trial lawyer. I sued Allstate and all these people over and over again. The community benefited from him. He never recused himself from those cases. And ironically lawyers never wanted him to recuse himself from those cases. And he was always fair. Nobody ever said Judge Levy was not fair. They may have said he was old, but they never said he was not fair.

THE COURT: And I agree with you on that point. I think I could be, too, which is why I said I would recuse myself based on Canon 3(C) because I can see why reasonable minds would come to the conclusion based on the appearance of impropriety.

But at any rate, I am going to rule that my determining whether or not Judge Reese has the ability to be impartial in this case is something that is totally separate and distinct from making any kind of conclusions or statements as it relates to the merits of the case. I'm simply determining whether or not a presiding judge is in violation of any of the [22] provisions of Art. 151.

MS. JACOBS: Yes, Your Honor. So, you're going to go forward with the hearing?

THE COURT: So, we're going to go forward with the hearing on Judge Reese.

MS. JACOBS: Your Honor, he has been subpoenaed, and I think he's waiting on a courtesy

call from the Court, at the pleasure of the Court, if you want to call him. Can we take a two-minute recess?

THE COURT: And you may submit, counsel, whatever it was that you have.

MR. ANZELMO: Yes, Your Honor. That's what I was going to ask you to do, whether those exhibits would be deemed admitted.

THE COURT: We're a Court of record.

(At this time, a short recess was held.)

HON. KERN ANTHONY REESE, [Home Address Omitted], New Orleans, Louisiana; after having been called to the stand and sworn by the Court, was examined and testified as follows:

MS. JACOBS: It's counsel's motion. So, I think he has to start with the examination.

[23] EXAMINATION

BY MR. ANZELMO:

Q Judge, would you like some water? You're not going to be up there, I believe, that long, but in case you wanted some before we got started.

A I'm fine. Thank you.

Q Judge, would you please state your full name and address for the record.

A Kern Anthony Reese, [Home Address Omitted], New Orleans, Louisiana 70122.

Q Judge, I'm Tommy Anzelmo representing the Orleans Levee District. I have some questions to ask you in connection with the matter that's presently before the Court. Judge, on August 29, 2005, where was your residence?

A I was living at [Home Address Omitted] New Orleans, Louisiana.

Q Judge, is that address close to Bayou St. John?

A It's about two blocks from there.

Q You would be geographically between the eastern edge of Bayou St. John and the western side of the London Avenue Canal in the City of New Orleans?

A Yes.

Q In August of '05, I believe that you were married to Dorothy?

A That's correct.

Q There were two gentlemen who filed suit in Federal Court. One was named Justin and was named Jared, and they both listed in their papers as living at [Home Address Omitted]. Are they your children?

A Yes, they are.

Q Were they minors or adults in August of '05?

[24] A Both adults.

Q Your Honor, were you aware that a lawsuit had been filed on behalf of your wife and on behalf of a Justin and Jared in the United States District Court for the Eastern District of Louisiana naming, among others, as Defendants the United States of America and the Board of Commissioners of the Orleans Levee District?

A Yes, I was aware that they had filed suits.

Q And, Your Honor, did you read the lawsuits prior to there [sic] being filed?

A No.

Q When was the first time that you became aware that your wife and your two sons had filed a suit against the Orleans Levee District in Federal Court?

A Well, they received copies of the suits after they were filed. At that point I realized that they had filed the suits. They had told me they were planning on doing it.

Q And those suits, at least the one that was filed by your wife, I believe bears a date stamp of August 29, 2007, and the ones for Jared and Justin both bear that same date. So, it would have been some time thereafter that you became aware of that?

A Correct.

Q Judge, I assume that you are aware that you are presently the trial judge in the action that we're here about today, Susan and William Laurendine, et al v. The Levee District, et al, Docket No. 05-11660; is that correct?

A Correct.

Q Your Honor, were you also aware that your wife [25] had filed a suit against Allstate Insurance Company, Civil Action No. 06-4873, which was filed August 28, 2006, in the United States District over the Eastern District of Louisiana?

MS. JACOBS: Objection. It's totally irrelevant, Your Honor, for this hearing.

THE COURT: What's the relevancy?

MR. ANZELMO: Your Honor, if you could permit me, I'll make it clear. Well, I'll state it now. Contained within that lawsuit there were three personal property inventory forms describing contents lost, all signed by Judge Reese claiming that he was damaged, lost contents, lost value as a result of floodwaters experienced during Hurricane Katrina.

THE COURT: What's that got to do with his Orleans Levee District matter?

MR. ANZELMO: What I'm establishing is that Judge Reese by what's in these pleadings has a pecuniary interest in the outcome of the Laurendine case in which he is a putative class member based

upon his address and the allegations of the Laurendine case.

THE COURT: I'm going to allow it. Go on.

MS. JACOBS: [26] Will the Court note my objection?

It's Allstate Insurance Company.

THE COURT: Yes, it's already noted. That's why we got a court reporter. Let's go.

A I'll answer the question. Yes, I'm familiar with the lawsuit. My wife is the named insured on that policy. I assisted her in preparing the contents list. She also received the proceeds from the lawsuit.

MR. ANZELMO: Judge, can I approach the witness?

THE COURT: Yes, you may.

MS. JACOBS: He just said he helped her prepare it. What do you want to do that for? He's already answered that question. Go ahead if the Court wants to let you do it. I object. I think it's irrelevant.

BY MR. ANZELMO:

Q Judge Reese, in connection Civil Action No. 06-4873, this is the suit by your wife versus Allstate Insurance Company. I'm going to show you the first page.

MS. JACOBS: Your Honor, can I make my objections continuing? Because I would object to the entire proceeding with Allstate.

THE COURT: So noted. All questions related to Allstate is objected to by opposing [27] counsel. Go ahead.

BY MR. ANZELMO:

Q Judge Reese, would you have signed each one of the pages?

A Oh, yes, that's my signature.

Q Judge Reese, would it be a fair statement to say that in connection with the allegations that are in the federal lawsuits that were filed by your wife and your children that they claimed that they suffered property damage, whether real property or contents damage, as a result of the failure of the 17th Street and London Avenue Canals?

A I think those allegations were made in that lawsuit.

Q In connection those allegations, do you believe that at the time that your wife and children filed those lawsuits in Federal Court against the Orleans Levee District that they believed that the Orleans Levee District was responsible for their damages?

MS. JACOBS: Objection. How would he know? He's not a party to that lawsuit. Unless he's in their mind. They're independent people, Your Honor.

MR. ANZELMO: Your Honor, he said he read the lawsuits.

MS. JACOBS: But he doesn't know what's in their minds.

MR. ANZELMO: Well, he may know what's in their [28] minds.

MS. JACOBS: No.

THE COURT: Y'all me to rule or do you want to have a debate?

MS. JACOBS: We want the Court to rule, Your Honor.

THE COURT: I'm going to sustain the objection. Lay a foundation, counsel.

BY MR. ANZELMO:

Q Judge Reese, did you discuss with your wife and your children the nature of their allegations against the Orleans Levee District?

A My discussion with my wife and my children regarding their respective claims is that if we wanted to file a lawsuit, they could choose to do that. They're all adults.

Q And did you understand that within those allegations that they believed they were claiming that the Orleans Levee District was responsible for their damages?

A My son was a first-year law student completing one week of law school – Well, after that. He was a second-year law student at that point, I guess. My wife and the youngest son has no legal training at all.

MS. JACOBS: Your Honor, I object. I do. But I have to make an objection on the grounds of relevancy. What they may have thought is [29] irrelevant.

THE COURT: You can't object to the witness responding to a question.

MS. JACOBS: I object to the question, Your Honor.

THE COURT: The objection is overruled. Go on, Judge.

A They wanted to file a suit. I told them do what's in your best interest.

BY MR. ANZELMO:

Q And in connection with those lawsuits, they understood and you understood through conversations with them about this that –

A No. They had discussions with the attorneys they engaged, and decided who they wanted to sue. I didn't counsel them on that.

MS. JACOBS: I have another objection. And I apologize, Judge Reese, to have to make the objection. What they understood, only they can say what they understood. You can ask Judge Reese –

THE COURT: Then you object to the form of the question?

MS. JACOBS: Yes, Your Honor.

THE COURT: Then that objection is sustained. We're going to object and then we'll go [30] from there. I don't need editorials.

BY MR. ANZELMO:

Q Judge Reese, as we sit here today, you are aware that your spouse, your wife, and your two adult children have sued the Orleans Levee District claiming that they were damaged as a result of failures of the 17th Street and London Avenue Canal; is that a fair statement?

A Well, that's what's contained in the lawsuit. At the time the suits were filed, I thought they were suing the Corps of Engineers. I didn't know.

Q But you do know now; is that a fair statement?

A Sure.

THE COURT: Just for the record, as I indicated, I learned about the Orleans Levee District, being a party to the lawsuit that my wife and I are involved in, yesterday, which I stated earlier. Go ahead.

BY MR. ANZELMO:

Q Judge Reese, are you familiar with the allegations as they have been stated in the Laurendine matter which is –

A I read that petition, absolutely.

Q In connection with that petition, would it be a fair statement to say that it describes the putative class as being those residents and property owners within Orleans Parish for sure and parts of Jefferson Parish who suffered damages as a result of failures of the 17th Street and London Avenue Canals?

A Uh-huh.

Q Would you agree that within the geographical [31] area that has described the class, that at the time of Katrina the location of your home and where your spouse and sons were living was within that geographic boundary?

A Uh-huh. Yes.

Q I lost my train of thought. Forgive me.

A You asked me about whether they were within the geographic boundaries between the 17th Street Canal and the London Avenue Canal.

Q Would you agree, as the Laurendine petition is stated, that currently they are putative members of that class by geographical location?

A Well, I might disagree –

MS. JACOBS: Excuse me, Your Honor. May I interpose an objection? That case has not been certified as a class action yet. We prayed for it, but it hadn't been certified. Right now the only Plaintiffs before the Court are those that are named in the petition.

MR. ANZELMO: And, Your Honor, that's why I said based upon the allegations. I understand there has been no class certified. But just based upon what we have right now.

MS. JACOBS: Object to skepticism.

THE COURT: I sustain that. Rephrase the question. Potential.

BY MR. ANZELMO:

[32] Q Judge Reese, based upon the allegations in the Laurendine complaint and the location of where your home and your wife's home and your children's home was located, they are potential members of the putative class as stated in the Laurendine petition?

A Potentially, yes, I could imagine that they could be.

Q Judge Reese, are you aware that the allegations in the federal lawsuits that have been brought by your wife and children, in essence, contain the same allegations in the Laurendine petition relative to damages sustained by potential members of the

putative class within the geographical area as described in Laurendine?

A I don't know if I agree with that.

Q And what's the basis of the disagreement?

A I really don't remember what's in their petitions, because I glanced at it but I didn't read it and it's been awhile. I got a copy of it with the information received on this motion, as well as a subpoena. But, again, I read that a couple of days ago. And I'm just finishing a seven-day jury trial. So, my brain is a little fried.

MR. ANZELMO: Judge Bagneris, may I approach the witness?

THE COURT: You may.

BY MR. ANZELMO:

Q Judge Reese, I'm going to show you Exhibit 2 to my motion, the current motion. It's Civil Action 07-4999 entitled Dorothy Reese v. several defendants, [33] including the Orleans Levee District. And I'm going to ask if you would confirm for me that Paragraph 2 of that complaint indicates that your wife owned and resided at the property located at [Home Address Omitted], on August 29th, when the Orleans levee system failed, particularly 17th Street, London Avenue, and Orleans Canals?

A I mean, that's what the document says. Now, if you ask me if that's where my wife resided and did she own the property, yes, she did.

Q I'm going to show you on Page 28 of the complaint Count 1. It provides negligence of Defendants in the dredging of the 17th Street Canal. Do you see that, sir?

A Yes, I do.

Q And Paragraph 88, does it not provide as a direct and proximate result of the negligence of the Corps, OLD, Orleans Levee District, and others in the dredging of the 17th Street Canal, that she suffered extensive damage including, but not limited to, loss of property, both movable and immovable, diminution of property value, evacuation expenses, additional living expenses, mental anguish, emotional distress, attorney fees, and other special damages to be proven at trial?

A That's what the document says.

Q Judge Bagneris, insofar as Count 3 is concerned at Page 31, this asserts the negligence of the Defendants in the design, construction, and maintenance of the London Avenue Canal, levees, and floodwalls, and –

THE COURT: [34] Did you mean to say Judge Bagneris just now?

MS. JACOBS: He did say that, Judge.

MR. ANZELMO: I meant to say Judge Reese.

THE WITNESS: I'm sorry. What's your question?

BY MR. ANZELMO:

Q And at Paragraph 102 of Count 3, does it not provide as a direct and proximate result of the negligence of the Corps, OLD, and others in the design, construction, and maintenance of the London Avenue Canal, that Plaintiff suffered extensive damage including, but not limited to, in essence, makes the same recitation?

A That's what the document says, I agree.

MS. JACOBS: Your Honor, are we going to read the entire lawsuit? I'm going to object to that.

THE COURT: No. I think we got two more tabs to go.

BY MR. ANZELMO:

Q Count 4 deals with the negligence of the Defendants in the construction and maintenance of Orleans Avenue Canals, levees, and floodwalls; correct?

A Correct.

Q And there are other counts claiming liability against the Orleans Levee District dealing with, Page [35] 35, strict liability?

A Yes.

Q Nuisance on Page 36, Count 6?

A Yes.

Q And in the prayer for relief the prayer asks that the Defendants be held liable for her damages or Plaintiff's damages as a result of Subparagraph 2, the design, construction, and maintenance of the 17th Street Canal; Subparagraph 3, for the negligence and design, construction, and maintenance of the London Avenue Canal.

A Okay.

Q Judge Reese, in connection with the lawsuits filed by Justin and Jared, Justin's lawsuit, one of them is 07-5148, my Exhibit 4, and Jared, Civil Action No. 07-5150, my Exhibit 5. Having reviewed those at some time in the past, do you understand that the allegations are basically identical to what's in your wife's suit?

A I'm sure they're consistent.

Q And, Judge Reese, would it be a fair statement to say that insofar as the allegations of the Laurendine case, that those allegations deal with the claims of negligence by members of the potential putative class, that the Orleans Levee District as one Defendant is liable for damages as a result of design, construction, and maintenance of the 17th Street and London Avenue Canals?

A I think those allegations are contained therein. But by way of explaining my answer, Mr. Anzelmo, the operative word is potential putative members. And since they have indeed filed lawsuits [36] in Federal Court and, as I understand it, the Corps of

Engineers has already been granted immunity, I don't know the status of those lawsuits. I think it's been appealed to the Fifth Circuit. And they have the opportunity to opt out of any class action because they have their own lawsuits. Consequently, I don't know if –

MS. JACOBS: Your Honor, for a point of information, you cannot have a class action against the Corps of Engineers. It's prohibited by law. That is the law. Since I'm in those cases.

MR. ANZELMO: I should now say –

THE WITNESS: I'm talking about the suits in Federal Court.

THE COURT: It's the Court's appreciation there's not been a class certified, but there has been a ruling that the Corps of Engineers is immuned, and that's subject to –

MS. JACOBS: – being dismissed.

THE COURT: Now, that is not in concrete. Because, like so many things, so many litigation subsequent to Katrina, it is not final until the Supreme Court has spoken on the issue, and to my knowledge that hasn't happened yet.

[37] MR. ANZELMO: And if Your Honor is taking judicial notice of the dismissal of the United States of America from the levee litigation, the Court should also take judicial notice of the fact that the Orleans Levee District has not been dismissed, and

those actions against the Orleans Levee District and other Defendants –

THE COURT: Are pending.

MR. ANZELMO: – are proceeding.

THE COURT: Right.

MR. ANZELMO: Which is part of the reason why those lawsuits will remain viable, potentially remain viable against the Orleans Levee District, because there were other Defendants named in these lawsuits, all of which I have not named.

At this time, Your Honor, I'd like to offer, introduce, and file into evidence the complaint filed by Dorothy Reese, Civil Action No. 07-4999, which is identified in my papers as Exhibit 2; the lawsuit, Civil Action No. 06-4873, Dorothy Reese v. Allstate; Civil Action No. 07-5148, Justin Reese v. Orleans Levee District and others; and Jared Reese, Civil Action No. 07-5150.

[38] THE COURT: All that is Exhibit 2?

THE WITNESS: I guess it's en globo.

MR. ANZELMO: No, Your Honor, Forgive me. Exhibit 2 was the original Dorothy Reese, Exhibit 3 is Dorothy Reese v. Allstate. Exhibit 4 is Justin Reese v. United States of America. Exhibit 5 is Jared Reese.

BY MR. ANZELMO:

Q Judge Reese, the home at [Home Address Omitted] –

A Forty-six.

Q [Home Address Omitted], was that property owned by you and your wife?

A No,

Q Separate property?

A Her separate property.

Q No community asset there?

A No.

Q In connection with your residence at [Home Address Omitted], did you have personal property within that house owned by you or a community asset that was destroyed as a result of the flooding that occurred during Hurricane Katrina?

A My wife and I had no community. My property was upstairs in the second floor closet and in the study.

Q The furniture items on the first floor of your home, was any of that community property?

A I'm sure you've heard the old maxim with your [39] spouse. What's yours is mine; what's mine is mine. My wife is a firm believer in that.

Q Yes, Your Honor, and I thank you for that answer. But notwithstanding what she believed, did you own some of that property that was on the first floor that was inundated by the floodwaters?

A I think I lost some cassette tapes.

Q Your Honor, in connection –

THE COURT: The only thing we have is CDs, cassettes, and albums.

THE WITNESS: My albums were on the second floor. So, I didn't lose those.

BY MR. ANZELMO:

Q Judge Reese, in connection with the flooding which was experienced at your residence, did you experience mental anguish and/or inconvenience as a result of being displaced from your home?

A Yes, honestly, I did.

Q And, Judge, how long were you away from your home as a result of the floodwaters?

A About a year and a half.

Q I believe that you and your wife were required to purchase a new home in Baton Rouge as a result of that?

A We did.

Q That particular home, both you and your wife are listed as co-owners of that property; is that fair?

A That's correct.

Q And, so, you had to personally pay money to [40] acquire a second home as a result of your inability to live at your home at [Home Address Omitted] as a result of the flooding; is that a fair statement?

A Myself, my cousin, my mother, my son, my stepfather, a couple of friends, a couple of relatives, other relatives.

Q Your Honor, did they all contribute monies to that?

A Oh, yes, absolutely.

Q And, Judge, all those individuals that you mentioned, all of those relatives, were they living in Orleans Parish at the time of Hurricane Katrina?

MS. JACOBS: Objection.

THE COURT: Overruled. Go ahead. You can answer.

A My mother, my stepfather, my cousin. My son, he was living uptown. He was close to the river. He didn't have any flooding problem. My aunt and my uncle were living in New Orleans East. That's outside of the jurisdiction. That's a different lawsuit, I think.

BY MR. ANZELMO:

Q But within the geographical area of the Laurendine case, would it be a fair statement to say that you had relatives within the fourth degree –

A Sure.

Q Let me get the whole question out, Your Honor. – who suffered damages as a result of flooding due to the breaches in the London Avenue and the 17th Street Avenue Canal?

A Yes.

[41] Q Judge Reese, would you agree that a party, a reasonable person, might conclude that if they saw that you were being called upon to judge a case where you were the judge of the case and that family members, including your spouse. were also members of the case, potential members of the case, and were also suing the same defendant, that that would create an appearance of partiality?

MS. JACOBS: Objection.

THE COURT: What's the objection?

MS. JACOBS: The objection is which reasonable person? How would he know? Is he all knowing? Does he know what everybody would think?

THE COURT: It's a reasonable person standard that everybody in this courtroom uses all the time. Objection overruled. You can answer the question.

A Mr. Anzelmo, what other people think is their conclusions to draw. My conclusions to draw is that I was elected by the people of Orleans Parish to do a job and to do it right and to do it fair and to look at

the evidence presented and to rule accordingly. I don't shirk my responsibility; I don't run away from it.

BY MR. ANZELMO:

Q Thank you, Your Honor. Were you finished?

A No. Let me say to you if I felt that I could [42] not do this fairly and objectively, I would recuse myself.

Q Insofar as your personal analysis, and no disrespect intended, insofar as Judicial Canon 3(C), do you believe that under the tenants [sic] of that canon that a reasonable person might see that if there is a judge in a case whose wife is suing the same defendant who is the subject of the original case, that that person might believe that the judge's impartiality might be reasonably questioned?

MS. JACOBS: Objection, Your Honor.

THE COURT: Asked and answered. Sustained.

BY MR. ANZELMO:

Q Judge Reese, how many feet of floodwater did you have in your home?

A About five and a half. And I assume you're talking about on [Home Address Omitted]?

Q Yes.

A Yes. That's where my wife was letting me live.

Q Judge Reese, do you understand, as you sit here today, that you know that your wife is suing and children are suing the Orleans Levee District –

MS. JACOBS: Object. It's already been established, Your Honor.

THE COURT: That's harmless. Go ahead.

THE WITNESS: Again –

BY MR. ANZELMO:

[43] Q I wasn't finished, Your Honor. Please forgive me. I shouldn't have paused.

Your wife and children are suing the Orleans Levee District, and that you've been asked or assigned the Laurendine case in which the Orleans Levee District is a defendant?

A I want to make sure I understand your question. If there's a class certified, potentially they could be. That hasn't happened. They're not parties to the suit. So, I guess, potentially, I guess we all have potential. It could be a lot things. But the actuality on balance at this point is no.

Q You said they're not parties to the lawsuit. But you do agree that they fall within the geographical area that would – right now they are potential putative members of that class as it is described in Laurendine?

MS. JACOBS: I object. It hasn't been certified as a class. The definition hasn't been established. That has to be established after a hearing. I mean, this is all speculation, Your Honor.

THE COURT: Objection overruled. That's why the term was potential, a potential member.

A I imagine they are.

BY MR. ANZELMO:

Q Judge Reese, would you agree that in the Laurendine case that you will ultimately be the decider of whether or not this class is certified and the geographical boundaries of the class?

[44] A If I am not recused, I imagine I would be.

Q So, that's a yes, you agree?

A I think that's a yes.

MR. ANZELMO: Thank you very much, Your Honor. That's all the questions I have at this time.

EXAMINATION

BY MS. JACOBS:

Q Good morning, Your Honor.

A Good morning.

Q I know you're probably sick of seeing me anyway for awhile.

A No, absolutely not.

THE COURT: You were part of that seven-day trial?

MS. JACOBS: I was, Judge. Happy to be part of that seven-day trial.

THE WITNESS: Ms. Jacobs did a very commendable job.

MS. JACOBS: Thank you, Your Honor.

THE COURT: Well, that means that the jury has come back.

MS. JACOBS: The Civil District Court juries are back; New Orleans is coming back, Your Honor.

BY MS. JACOBS:

Q Judge, you personally have not filed a lawsuit [45] against the Orleans Levee Board; is that correct?

A No, I have not.

Q And neither you nor your wife are plaintiffs in the Laurendine case?

A No, we are not.

Q And neither you nor any relatives are named plaintiffs in that case?

A That's correct.

Q And to your knowledge that Laurendine case has not been certified as a class?

A No, ma'am.

Q Now, you do realize that the Laurendine case has requested a jury?

A Yes, I am.

Q And do you feel that you can be fair and empanel a jury and let them be fair to the final outcome of this case?

MR. ANZELMO: Objection to the form of the question. That's a standard to be decided by the Court.

THE COURT: I'm sorry. Could he be fair?

MS. JACOBS: Fair and impartial.

THE COURT: You object to the form of that question?

MR. ANZELMO: Because its incomplete based upon the basis upon which we brought our motion. That includes one element of it, but it's [46] not –

THE COURT: Objection overruled.

BY MS. JACOBS:

Q You feel you can be fair and impartial?

A Absolutely.

Q You've tried many jury cases since you've been been on the bench; is that correct?

A Yes.

Q And when you became a judge, didn't you take an oath; wasn't an oath required?

A Absolutely.

Q And did that oath require that you state that you could be fair and impartial, and judge cases based upon the sworn testimony and evidence that's presented before you?

A Yes, ma'am.

Q And do you feel you could do that in the Laurendine case?

A Yes, I can.

Q Now, with regard to the lawsuits that have been filed in Federal Court, you are aware of the fact that there was a deadline to file against the Army Corps of Engineers and if someone didn't file, they were out?

A Yes, ma'am.

Q Are you also aware of the fact that with regard to the Army Corps of Engineers you cannot have a class action?

A Yes.

MR. ANZELMO: Objection.

[47] BY MS. JACOBS:

Q In that case or the MR-GO case?

MR. ANZELMO: Objection to relevance.

A Well, I know that.

BY MS. JACOBS:

Q And you are aware that in no area in Federal Court or State Court regarding the Orleans Levee District or the MR-GO or the Army Corps of Engineers has the case been certified as a class?

MR. ANZELMO: Objection to relevance.

THE COURT: Overruled.

A Not to my knowledge.

MS. JACOBS: Thank you, Your Honor.

EXAMINATION

BY MR. ANZELMO:

Q Judge Reese, you were asked questions about the taking of your oath?

A Yes.

Q Did that oath include that you would follow the judicial canons, as well as the articles of the Code of Civil Procedure?

A Absolutely.

Q And, Judge Reese, insofar as the residence that you maintain or maintained in August of 2005, were you benefiting from the fact that your wife owned the house and let you live there?

MS. JACOBS: Object. I never went into that on [48] cross.

THE COURT: Sustained.

MR. ANZELMO: That's all the questions I have, Your Honor.

THE WITNESS: I'm done?

THE COURT: You're done. We'll have a decision out in 24 hours.

(At this time, end of proceedings for the day.)

CERTIFICATE

I, LESLIE CALLAIS, C.C.R., an Official Court Reporter, do hereby certify that the foregoing is a correct copy of the proceedings taken by me in shorthand and transcribed under my personal supervision.

/s/ Leslie Callais
LESLIE CALLAIS, C.C.R.

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 06-9763 DIVISION "L" SECTION "6"

LISA RODRIGUEZ, ANTHONY RUSSO, CURTIS AMANN, and LAURA AMANN

VERSUS

SEWERAGE AND WATER BOARD OF NEW ORLEANS, BOARD OF COMMISSIONERS FOR THE ORLEANS LEVEE DISTRICT, THE CITY OF NEW ORLEANS, THE LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, and THE BOARD OF COMMISSIONERS FOR THE PORT OF NEW ORLEANS

FILED: _____ _____
DEPUTY CLERK

ORDER OF RECUSAL

In accordance with Louisiana laws regarding recusal of a judge, Louisiana Code of Civil Procedure Article's 151(B) and 152(A), and in an abundance of caution, I hereby recuse myself from the above numbered and captioned case. I live in the defined footprint of this action. Living in the defined footprint of this action could make me a putative class member.

IT IS ORDERED that the Clerk of Civil District Court for the Parish of Orleans is directed to re-allot

this matter, in its entirety, to another of this court, thus omitting Division "L".

New Orleans, LA., this 30th day of June ~~July~~, 2008.

/s/ K A Reese
JUDGE KERN A. REESE
DIVISION "L"

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 06-9763 DIVISION " "

LISA RODRIGUEZ, ANTHONY RUSSO, CURTIS AMANN, and LAURA AMANN

versus

SEWERAGE AND WATER BOARD OF NEW ORLEANS, BOARD OF COMMISSIONERS FOR THE ORLEANS LEVEE DISTRICT, THE CITY OF NEW ORLEANS, and THE LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, THE BOARD OF COMMISSIONERS FOR THE PORT OF NEW ORLEANS

FILED: _____ _____
DEPUTY CLERK

CLASS ACTION PETITION FOR DAMAGES JURY TRIAL REQUESTED

(Filed Aug. 28, 2006)

The Petition of Lisa Rodriguez and Anthony Russo, persons of the full age of majority, domiciled in the Parish of Orleans, State of Louisiana, and Curtis Amann and Laura Amann, persons of the full age of majority and residents of the State of Virginia, who meet the definition of class members provided in Paragraph 1, below, with respect represents that:

INTRODUCTION:

1. This is a class action on behalf of all residents, real and personal property owners, business interests, and other economic and non-economic interests present on August 29, 2005 in an area of Orleans Parish bounded by Lake Pontchartrain on the North, Elysian Fields Avenue on the East, Interstate Highway 610 on the South, and the Jefferson Parish line on the West, and of persons whose decedents were located in that area on that date, who as a result of wrongful conduct occurring in Orleans Parish, suffered catastrophic flood-related damages in during and after Hurricane Katrina.

PARTIES PLAINTIFF:

2. The persons who bring this action for damages, pursuant to Louisiana Code of Civil Procedure Articles 591, *et seq.*, on behalf of all similarly situated Louisiana citizens, (herein collectively referred to as "Plaintiffs"), are:

   A. Lisa Rodriguez, who is a person of the full age of majority, a resident of Orleans Parish, and a citizen of the State of Louisiana;

   B. Anthony Russo, who is a person of the full age of majority, a resident of Orleans Parish, and a citizen of the State of Louisiana;

   C. Curtis Amann and Laura Amann, persons of the full age of majority and citizens of the State of Virginia.

3. The number of persons who are Plaintiffs is unknown at present, but is reasonably believed

to be at least several thousand, such that joinder of all putative class members in one proceeding would be impracticable.

PARTIES DEFENDANT:

4. Named as Defendants are:

   A. Sewerage and Water Board of New Orleans, a political subdivision of the State of Louisiana created by La. R.S. 33:4071, *et seq.*, for the purpose of constructing, controlling, maintaining, and operating the public drainage system of the City of New Orleans;

   B. Board of Commissioners of the Orleans Levee District, a political subdivision of the State of Louisiana created by La. R.S. 38:307, *et seq.*, for the purpose of locating, relocating, constructing, maintaining, extending, and improving levees, embankments, sea walls, jetties, breakwaters, water-basins, and other works in relation to such projects, and to conduct all dredging operations necessary in connection therewith or incidental thereto along, over, and on the shores, bottom, and bed of Lake Pontchartrain in the Parish of Orleans;

   C. The City of New Orleans, a political subdivision of the State of Louisiana; and

   D. The Louisiana Department of Transportation and Development, a political subdivision of the State of Louisiana created by La. R.S. 36:501, *et seq.* Its purposes include " . . . . developing and implementing programs in all

areas of transportation including . . . hurricane flood protection. . . ." *Id.* at §501 B, and establishing an Office of Public Works, Hurricane Flood Protection, and Intermodal Transportation " . . . . which shall administer all matters, including engineering, relating to the programs of the state with respect to the design, construction, extension, improvement, repair, and regulation of hurricane flood protection, including but not limited to the construction and design of a hurricane flood protection system consisting of levees and associated elements to provide protection against tidal surges within the Louisiana coastal zone as defined in R.S. 49:214.24, and other special hurricane flood protection programs as may be directed by the secretary. . . ." *Id.* at §508.3 A.

E. The Board of Commissioners of the Port of New Orleans is a political subdivision of the State of Louisiana pursuant to La. R.S. 34:1 et seq., which regulates commerce and traffic of the Port and Harbor of New Orleans legally responsible for the construction, maintenance and operation of the Mississippi River Gulf Outlet.

JURISDICTION:

5. This court has subject matter jurisdiction over the controversy pursuant to La. Const. Art. 5 § 16 A 2 and because the damages are within the jurisdictional limits of the Court as set forth in La. C.C.P. art. 1, *et seq.*

VENUE:

6. Venue is appropriate in this Honorable Court pursuant to Louisiana Code of Civil Procedure Article 74.

THIS CAUSE IS MAINTAINABLE AS A CLASS ACTION BECAUSE:

7. This cause is maintainable as a class action because:

   A. One or more members of the class may sue as representative parties on behalf of all;

   B. The class is so numerous that joinder of all members is impracticable;

   C. Virtually all of the persons, things, and interests located in the area described in Paragraph 1, *supra,* to a greater or lesser degree of damage, were affected by the concurrent negligent acts or omissions of the Defendants and the U.S. Army Corps of Engineers;

   D. There are questions of law and/or facts common to the class; and

   E. The claims of the representative parties are typical of the claims of the putative class.

8. The questions of law and fact common to the Plaintiffs, the putative class, or to Plaintiffs and subdivisions of the putative class, include, but are not limited to:

   A. Whether any percentage of the negligence causing Plaintiffs' harm is attributable to the U.S. Army Corps of Engineers;

B. Whether any or all of the Defendants are comparatively at fault with the U.S. Army Corps of Engineers;

C. Whether Plaintiffs' damages were caused or exacerbated by the preventable entry of waters from Lake Pontchartrain via:

(1) the 17th Street Canal;

(2) the Orleans Avenue Canal; and

(3) the London Avenue Canal;

D. Whether Plaintiffs' damages were caused or exacerbated by the failure of one or more of the Defendants to properly maintain the sea walls on:

(1) the 17th Street Canal;

(2) the Orleans Avenue Canal; and

(3) the London Avenue Canal.

E. Whether Plaintiffs' damages were caused or exacerbated by the failure of one or more of the Defendants to properly inspect the sea walls on:

(1) the 17th Street Canal;

(2) the Orleans Avenue Canal; and

(3) the London Avenue Canal.

F. Whether Plaintiffs' damages were caused or exacerbated by one or more of the Defendants shutting down storm drainage pumping stations during and after Hurricane Katrina;

G. Whether the Defendants concealed information from Plaintiffs regarding the safety of the 17th Street Canal, the Orleans Avenue Canal, and the London Avenue Canal;

H. Whether the conduct of the Defendants has created a long-term heath [sic] risk in the proposed class area due to its inundation with polluted waters;

I. Whether some of the water affecting Plaintiffs came from more remote sources such as, e.g., the Inner Harbor Navigation Canal, or the "north" 17th Street Canal; and

J. Whether any of the Defendants assumed flood protection responsibility for the U.S. Army Corps of Engineers.

9. The claims of the named Plaintiffs are typical of the claims of the class, which include wrongful death, property damage, property losses, evacuation expenses, mental anguish and suffering, loss of income and other economic losses, and a need for medical monitoring.

10. The named Plaintiffs will fairly and adequately protect the interests of the class because:

A. They are free of any interests which might be antagonistic to the other putative class members; and

B. They will actively participate in the litigation to ensure that the interests of the class members are protected from abuse.

11. The class may be defined objectively, using such readily ascertainable criteria such as lakes, canals, streets and avenues.

IN ADDITION, THIS CAUSE MAY BE MAINTAINED AS A CLASS ACTION BECAUSE:

12. The prosecution of separate actions by individual class members would create the risk of:

    A. Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

    B. Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not party to the adjudications or substantially impair or impede their ability to protect their interests.

13. This cause is proper for certification due to the fact that Defendants have acted and/or refused to act on grounds generally applicable to the class, thereby making equitable relief, including the establishment and administration of a medical monitoring program, injunctive relief, and/or declaratory relief appropriate with respect to the class as a whole.

14. The Court will find that questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient

adjudication of the controversy, and matters pertinent to that finding include:

A. The interest of the class individually controlling the prosecution of separate actions;

B. The extent and nature of any litigation concerning the controversy already commenced by members of the class;

C. The desirability or undesirability of concentrating the litigation in the particular forum;

D. The difficulties likely to be encountered in the management of a class action;

E. The practical ability of individual class members to pursue their claims without class certification; and

F. The extent to which relief plausibly demanded on behalf of the class, including vindication of public policies and legal rights as may be implicated, justifies the costs and burdens of class litigation.

PROPOSED CLASS DEFINITION:

15. Plaintiffs allege and propose that the class be defined as:

All residents, domiciliaries, business entities, property owners, and other persons and entities residing or present on August 29, 2005 inside the geographic area bounded by (1) Lake Pontchartrain on the North, (2) Elysian Fields Avenue on the East, (3) Interstate Highway 610 on the South, and (4) the Jefferson Parish line on the West, or whose decedents were

present in said area on or after August 29, 2005, who suffered damages as a result of Hurricane Katrina-related flooding on and after August 29, 2005, and thereafter suffered additional damages including but not limited to wrongful death, personal injury, loss of income and other economic losses, mental anguish, long term health risks associated with exposure to polluted flood waters, relocation expenses, damage to real property, and damage to personal property.

Or, alternatively, an appropriate definition designated by the Court.

FACTS:

16. The Sewerage and Water Board of New Orleans ("S&WB") has immediate responsibility for controlling and operating the public drainage system of the City of New Orleans.

17. The Board of Commissioners for the Orleans Levee District has the statutory responsibility to develop, construct, and maintain flood control systems and structures within the City of New Orleans, including levees, flood walls, sea walls, and flood gates, in order to protect the City of New Orleans from flooding.

18. On and before August 29, 2005, the 17th Street Canal, the Orleans Avenue Canal, and the London Avenue Canal extended for miles into New Orleans from Lake Pontchartrain.

19. The water level in all three canals was subject to the rise and fall of Lake Pontchartrain, and was

particularly susceptible to the effect of wind from the North.

20. On August 29, 2005, the storm surge and winds associated with Hurricane Katrina struck the New Orleans area, causing a rise in the level of the lake water flowing into the three canals.

21. Although not over-topped, the sea walls along the 17th Street Canal and the London Avenue Canal failed, collapsed, and resulted in severe flooding in the area described in Paragraph 1.

22. Although the Orleans Avenue Canal is not believed to have failed, its south terminus embankment was lower in height than the sea walls leading to Lake Pontchartrain, allowing entry of lake water into New Orleans and resulting in severe flooding in the area described in Paragraph 1.

23. Either the Parish of Orleans, or the Parish of Jefferson, or the City of New Orleans, or the Board of Commissioners of the Orleans Levee District, or the Board of Commissioners of the East Jefferson Levee District, or the Sewerage and Water Board of New Orleans, or a combination of them, owned the bottom of the 17th Street Canal.

24. Either the Parish of Orleans, or the City of New Orleans, or the Board of Commissioners of the Orleans Levee District, or the Sewerage and Water Board of New Orleans, or a combination of them, owned the bottoms of the Orleans Avenue Canal and the London Avenue Canal.

25. At some point the intruding waters from various points of entry in the City commingled with each other to form a saltwater sea.

NEGLIGENCE AND/OR FAULT OF THE SEWERAGE AND WATER BOARD:

26. Plaintiffs incorporate by reference Paragraphs 16 through 25 of this Petition as if fully set forth herein.

27. The Sewerage and Water Board of New Orleans was negligent in the following non-exclusive particulars:

    A. Failing to maintain properly the sea walls and earthen embankments on:

        (1) the 17th Street Canal;

        (2) the Orleans Avenue Canal; and

        (3) the London Avenue Canal.

    B. Failing to inspect properly the sea walls on:

        (1) the 17th Street Canal;

        (2) the Orleans Avenue Canal; and

        (3) the London Avenue Canal.

    C. Shutting down storm drainage pumping stations during and after Hurricane Katrina;

    D. Concealing information from Plaintiffs regarding the safety of:

        (1) the 17th Street Canal;

        (2) the Orleans Avenue Canal; and

(3) the London Avenue Canal.

E. Permitting the entry of polluted and toxic waters into the City of New Orleans and the area where Plaintiffs and class members reside;

F. Creating a health risk for Plaintiffs and class members;

G. Failing historically to measure levee heights while aware that these levees continued to subside;

H. Generally engaging in ineffective and counterproductive water pumping activities;

I. Failing, in 2004, to understand and correct seepage along the 17th Street Canal; and

J. Failure to provide auxiliary power sources for extended emergency operation of pumping stations.

K. Dredging the 17th Street Canal to a level below the sheet pile.

L. Breaching several acts of assurances given to the United States of America through the Corps of Engineers enacted for the benefit of the plaintiffs.

NEGLIGENCE AND/OR FAULT OF THE ORLEANS LEVEE BOARD:

28. Plaintiffs incorporate by reference Paragraphs 16 through 25 of this Petition as if fully set forth herein.

29. The Board of Commissioners for the Orleans Levee Board was negligent in the following non-exclusive particulars:

A. Failing to adequately inspect and [sic] the sea wall system on:

(1) the 17th Street Canal;

(2) the Orleans Avenue Canal; and

(3) the London Avenue Canal.

B. Failing to adequately maintain or construct the sea wall system on:

(1) the 17th Street Canal;

(2) the Orleans Avenue Canal; and

(3) the London Avenue Canal.

C. Failing to warn the public, including Plaintiffs and class members, that severe flooding would result from lake water overtopping the low embankment at the south end of the Orleans Avenue Canal;

D. Allowing the U.S. Army Corps of Engineers to construct the sea walls on the "north" 17th Street Canal [*i.e.*, between Pumping Station No. 6 and Lake Pontchartrain] which it knew would fail;

E. Dredging the canal bottom to a depth below that of sea wall sheet pilings on the Orleans Parish [east] side of the canal;

F. Failing, in 2004, to understand and correct seepage along the 17th Street Canal; and

G. Failing historically to measure levee heights while aware that these levees continued to subside and to maintain all fo [sic] the levees under its jurisdiction.

NEGLIGENCE AND/OR FAULT OF THE CITY OF NEW ORLEANS:

29. Plaintiffs incorporate by reference Paragraphs 16 through 25 of this Petition as if fully set forth herein.

30. The City of New Orleans was negligent in the following non-exclusive particulars:

A. Failing to protect Plaintiffs and class members from foreseeable flooding; and

B. Through the negligence of each of the Mayors of the City of New Orleans in serving as the head of the Sewerage and Water Board since its inception, and in concurring in the negligence, actions, and inactions of Board.

C. Liability through ownership of defective real property causing damage to adjacent owners.

NEGLIGENCE AND/OR FAULT OF THE LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT:

31. Plaintiffs incorporate by reference Paragraphs 16 through 25 of this Petition as if fully set forth herein.

32. The Louisiana Department of Transportation and Development was negligent in the following non-exclusive particulars:

A. Failing to develop and implement a hurricane flood protection plan for the area in which Plaintiffs reside;

B. Failing to inspect properly the 17th Street Canal and the London Avenue Canal sea walls;

C. Failing to improve the 17th Street Canal and the London Avenue Canal sea walls; and

D. Failing historically to measure levee heights while aware that these levees continued to subside;

LIABILITY OF THE BOARD OF COMMISSIONERS FOR THE PORT OF NEW ORLEANS

33. The Board of Commissioners of The Port of New Orleans entered into acts of assurances with the United States of America including, the years 1957, 1969 and 1974, wherein it assumed responsibility for any claim for damages due to construction, maintenance and operation of the Mississippi River Gulf Outlet project.

34. Pursuant to the controlling jurisprudence in Louisiana, the Port may not invoke the immunity provision that is personal to the Corps of Engineers (USA).

35. The Board of Commissioners of the Port of New Orleans has a real interest in the Mississippi River Gulf Outlet waterway.

36. The Port failed to maintain and assure safe operation of the project.

37. By agreement the Port is responsible for the water that flowed from the Mississippi River Gulf Outlet into the area defined in # 1 above.

DAMAGES:

38. These Defendants breached duties owed to Plaintiffs and the putative class.

39. As a result of the negligence and/or fault of the Defendants and the U.S. Army Corps of Engineers, Plaintiffs have been damaged.

40. As a result of the foregoing misconduct conduct [sic], Plaintiffs have sustained damages which include but are not limited to:

    A. Loss of/or damage to movable property;

    B. Loss of/or damage to real property;

    C. Profound mental anguish and suffering;

    D. Exposure of individuals and property to flood-borne toxic substances requiring future medical monitoring;

    E. Economic losses including business losses, increased insurance costs, insurance deductibles, lost wages and salaries, and the expenses of emergency relocation;

    F. Family separation and evacuation,

    G. Physical injury.

    H. Past and future medical expenses.

    I. Wrongful death of plaintiffs' decedents.

DEMAND FOR JURY TRIAL:

41. Plaintiffs hereby demand a trial by jury as to all issues triable by jury.

RELIEF REQUESTED:

37 [sic]. **WHEREFORE**, the representative Plaintiffs, individually and on behalf of all those similarly situated, pray that Defendants be served with a copy of the Petition and be cited to appear and answer same; that the foregoing class action petition be certified as a class action pursuant to Louisiana Code of Civil Procedure Articles 591, *et seq.*; that the suggested class representatives or other representatives designated by the Court be approved as class representatives; that the subclass and subclass representatives to be proposed in the Class Certification Petition be approved by the Court; that the boundaries suggested above or as designated by the Court be established; and, that after due proceedings had there be judgment herein in favor of Plaintiffs and against, Defendants, Sewerage & Water Board of New Orleans, Board of Commissioners of the Orleans Levee District, the City of New Orleans, the Louisiana Department of Transportation and Development and the Board of Commissioners for the Port of New Orleans, jointly, severally and in solids, as their respective liabilities may ultimately be determined, for any and all money damages which may be reasonable under these premises, plus legal interest thereon from date of judicial demand, for trial by jury, for all costs of these proceedings and for attorney fees as

provided for in La. Code of Civil Procedure, Article 595.

Respectfully submitted,

/s/ JJC
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PLEASE SERVE:

Sewerage and Water Board of New Orleans
through its Director,
Ms. Marcia St. Martin
625 St. Joseph Street
New Orleans, LA 70130

Board of Commissioners for the Orleans Levee District
through its President,
Mr. Michael McCrossen
6920 Franklin Avenue
New Orleans, LA 70122

City of New Orleans
through its Mayor
Honorable C. Ray Nagin, Mayor
New Orleans City Hall
New Orleans, LA 70112

Louisiana Department of Transportation and Development
through its Secretary
Mr. Johnny Bradberry
1201 Capitol Access Road
3rd Floor
Baton Rouge, LA 70802

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2005-11660 DIVISION L SECTION 11

SUSAN and WILLIAM LAURENDINE ET AL

VERSUS

THE BOARD OF COMMISSIONERS FOR THE ORLEANS LEVEE BOARD

JUDGMENT

This matter came for hearing on the 5th day of December, 2008 on defendant's, Sewerage and Water Board, Motion to Recuse the Honorable Judge Kern Reese.

PRESENT: DARLEEN JACOBS, Attorney for plaintiffs, SUSAN and WILLIAM LAURENDINE, AL LEBOUEF, ALINE HODGES, PIERRE ASCANI, THERESA HARVEY, DALE ATKINS and ANITA SARRAT;

CHARLES LANIER, Attorney for the defendant, SEWERAGE AND WATER BOARD

After hearing the pleadings, evidence and argument of counsel;

IT IS ORDERED, ADJUDGED AND DECREED that the Motion to Recuse Judge Reese is hereby granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of Court re-allot this matter, excluding Division "L".

JUDGMENT SIGNED, NEW ORLEANS, LOUISIANA this 13th day of January, 2009.

/s/ Robin M. Giarrusso
JUDGE ROBIN M. GIARRUSSO
DIVISION G

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2005-11660 DIVISION L SECTION 11

SUSAN and WILLIAM LAURENDINE ET AL

VERSUS

THE BOARD OF COMMISSIONERS FOR THE ORLEANS LEVEE BOARD

REASONS FOR JUDGMENT

Under the recent revision to La.CCP art. 151, this Court has no choice. Judge Reese must be recused as he and his family members are putative class members to this litigation. This Court is constrained to follow the mandatory language of the article despite this Court's belief that Judge Reese is a fair and impartial jurist.

SIGNED, NEW ORLEANS, LOUISIANA this 13th day of January, 2009.

/s/ Robin M. Giarrusso
JUDGE ROBIN M. GIARRUSSO
DIVISION G

Civil District Court for the Parish of Orleans
STATE OF LOUISIANA

No. 2005 – 11660 Section: 13 – J

HARVEY, ROBERT ETAL
versus
THE BOARD OF COMMISSIONERS
FOR THE ORLEANS LEVEE

Date Case Filed: 9/24/2005

NOTICE OF SIGNING OF JUDGMENT

TO:

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In accordance with Article 1913 C.C.P., you are hereby notified that Judgment in the above entitled and numbered cause was signed on February 9, 2009 New Orleans, Louisiana.

February 9, 2009 /s/ [Illegible]
MINUTE CLERK